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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057941
Party	Plaintiff Clockwork IP, LLC
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Attachments	Clockwork - Reply in Supp of Mot to Strike.pdf(53133 bytes) DeFord Decl.pdf(43536 bytes) Ex. 1.pdf(5444904 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CLOCKWORK IP, LLC	)	
	)	
Petitioner,	)	
	)	
v.	)	**Cancellation No. 92057941**
	)	**Reg. No. 3,618,331**
BARNABY HEATING & AIR, and	)	
McAFEE HEATING AND AIR	)	
CONDITIONING CO., INC.	)	
	)	
Respondents.	)	

PETITIONER'S REPLY IN SUPPORT OF PETITIONER'S MOTION TO STRIKE

Petitioner Clockwork IP, LLC ("Clockwork"), by counsel, states the following as its Reply in support of its Motion to Strike:

INTRODUCTION

Although titled an opposition to Clockwork's Motion to Strike, Respondent Barnaby Heating & Air's ("Barnaby") brief is nothing of the sort. Instead, similar to some of Barnaby's prior briefs on the pending motions in this case, the "opposition" literally ignores the majority of the issues brought up by the Motion to Strike, and is, instead, a propaganda piece through which Barnaby reiterates irrelevant points; launches personal, baseless attacks on Clockwork; and does not address the binding legal principles raised by Clockwork in support of its requested relief. By failing to address *several* of the grounds upon which Clockwork demonstrated that the Supplemental Declaration of Charles Barnaby (the "Supplemental Declaration"), the accompanying exhibits (the "Exhibits"), and the portions of Barnaby's reply in support of its cross-motion for summary judgment (the "Reply") that rely on the Supplemental Declaration and the Exhibits must be stricken, Barnaby has not only conceded that the Motion to Strike should be granted, it has clearly telegraphed that striking those portions of Barnaby's filing is the only proper result.

ARGUMENT

In its opening brief in support of the Motion to Strike, Clockwork thoroughly explained that the Supplemental Declaration, the Exhibits, and the portion of the Reply relying on those documents must be stricken because (1) they constitute an improper surreply ***to a different motion*** in violation of the Board's rules;[1] (2) they contain information previously omitted and/or conceded in Barnaby's prior briefs; (3) they contain information and documents Barnaby refused to produce *for over a year* in response to Barnaby's discovery requests even after a Board Order compelling the production; and (4) they contain information about which Barnaby does not possess foundation and/or personal knowledge. [Dkt. # 37] Clockwork's Mot. to Strike ("Clockwork's Mot.") at 2–11. In support of each ground, Clockwork provided legal authority and specific factual details. *Id.* Barnaby did not contest – and therefore concedes – that the Motion should be granted for any, or all, of reasons (1), (2), and (4) listed above, and its argument with respect to point (3) actually supports the conclusion that the Motion should be granted. [Dkt. # 38] Barnaby Opp'n to Mot. to Strike ("Barnaby Opp.") at 1–6.

Barnaby's "opposition" is premised on several meritless points. To start, Barnaby cites to TBMP § 528.05(b) – the sole legal authority in its brief – for no more than the general principle that affidavits (or here, declarations) can be filed in support of a motion for summary judgment. Barnaby Opp. at 3. Clockwork does not (and did not) contest that point. But in citing to section 528.05(b), Barnaby casually ignores the rest of the language of the section – which Clockwork cited along with other legal precedent – that declarations are permitted only when the information contained therein is based on the declarant's *personal knowledge*. TBMP § 528.05(b); *see also* Fed. R. Civ. P. 56(c)(4). Here, several parts of the Supplemental Declaration do not satisfy that standard. Clockwork's Mot. at 10–11. Moreover, Barnaby

[1] Ironically, Barnaby again includes information in its filing (this time in its "opposition") that amounts to an improper surreply in support of the cross-motion for summary judgment, which is already fully briefed. Specifically, on page 4, Barnaby reiterates its baseless "forum-selection clause" defense, calling the clause (which is *irrelevant and unrelated* to this matter) "damning," and on page 2, Barnaby vaguely complains that Clockwork failed "to uphold and abide by" the forum-selection clause. Barnaby Opp. at 2, 4. Not only do these arguments violate the well-settled rule against surreplies (and should also therefore be stricken and given no consideration), but they reinforce that Barnaby is unwilling, or unable, to abide by the Rules.

also ignores that TBMP § 528.05(b) does not permit a declaration to be used: (1) as a surreply, *see, e.g.*, *QSA Toolworks, LLC v. Realnetworks, Inc.*, No. 91168414, 2007 WL 459791 (T.T.A.B. Feb. 1, 2007); Clockwork's Mot. at 2–4; (2) to contradict concessions in, and/or add omitted information to prior filings, *see* Clockwork's Mot. at 5–7; or (3) to introduce information or evidence sought, but withheld, during discovery, *see Presto Prods. Inc. v. Nice-Pak Prods., Inc.*, 9 U.S.P.Q.2d (BNA) 1895 (T.T.A.B. 1988); Clockwork Mot. at 7–10. As a result, aside from reminding the Board of the basic principle that a declaration can be filed in support of a summary judgment brief, Barnaby's *sole legal authority* does nothing to elucidate the legal issues raised in Clockwork's Motion.

Next, Barnaby tries to refute that the Supplemental Declaration, the Exhibits, and portions of the Reply should be stricken pursuant to Rule 37(c)(1) because Barnaby refused to disclose information and documents during discovery. Barnaby states that: "Respondent admits the [Technician Seal of Safety] licensing agreement between Respondent and AirTime500 was discovered *in Respondent's files* only recently," Barnaby Opp. at 3 (emphasis added), and "[h]ad Respondent located the document sooner, it would have gladly turned those materials over to Petitioner," *id.* at 2. However, this point misses the mark. First, it addresses only *one* of the *four* documents attached as the Exhibits and subject to the Motion to Strike, and it does not explain why Barnaby withheld the other responsive information contained in the Supplemental Declaration. *See generally id.* Those documents and information must therefore be stricken. And second, Barnaby's statements regarding the Technician Seal of Safety licensing agreement do not, and cannot, excuse that document's late production. Not only is Barnaby's "recently discovered" story suspect, it flat out contradicts Barnaby's continuous representations to both the Board and to Clockwork *for over a year* that *no other responsive documents exist*. *See* Clockwork Mot. at 8–9 (examples of Barnaby's affirmative representations that no other documents exist). Without making any effort to harmonize its "no more documents exist" position with its "recently found" position, Barnaby simply asks that the Board believe that Barnaby *just* found the Technician Seal of Safety licensing agreement (not in some secret compartment, but) *in its files*, despite supposedly "diligently" honoring its discovery obligations in this case. Even if that was true – which the Board would be right to

doubt given the record in this case – the "late discovery" is *beyond* late and inexcusable under the Rules. *See* Clockwork's Mot. at 8–9. This is especially true not only given the fact that discovery ended a year ago, but that a Motion to Compel was granted against Barnaby, giving Barnaby another chance to search for responsive documents.

Perhaps recognizing that its "recently discovered" excuse is not only tired but also unsupportable, Barnaby quickly switches gears, claiming that the Supplemental Declaration and Exhibits do not contradict its prior interrogatory responses because "Petitioner failed to serve an interrogatory on Respondent that explored the prior existence of, or the expiration of, any licensing agreement between Respondent and AirTime500, LLC." Barnaby Opp. at 4. That contention is again refuted by not only the record, but by Barnaby's own conduct in this case. Included in Clockwork's first set of interrogatories is number 7, which requests Barnaby "[d]escribe and list *all agreements between* Respondent and Petitioner, Respondent and SGI, *Respondent and AirTime500*, including without limitation all Acknowledgments of Non-Solicitation Policy or Confidentiality Agreements executed by Respondent." *See* Ex. 1 to Decl. of Amanda L. DeFord ("DeFord Decl.") (emphasis added); *see also* [Dkt. # 37] Ex. A to Newberg Decl. Even assuming that Barnaby could have reasonably read the interrogatory as asking about current, unexpired licenses only – despite the presence of "*all*" and lack of other limiting terms – Barnaby cannot seriously maintain that position in light of its discovery responses in this case. In two of its prior discovery responses – the last of which was served in April 2015 in response to the Board's order compelling Barnaby's responses – Barnaby responded to the interrogatory by providing information about Barnaby's *former* agreement with AirTime500: "Respondent is a former member of AirTime500," and "Respondent is a former member of AirTime500 and on August 21, 2007 it entered into a contract with AirTime, LLC." Ex. 1 to DeFord Decl. Moreover, in complete contravention of its alleged belief that Clockwork's interrogatories did not ask about prior and/or expired agreements, Barnaby *voluntarily supplemented its response to interrogatory number 7*, albeit insufficiently, seven days before filing the Supplemental Declaration, the Exhibits, and the Reply, so that it now reads: "Respondent is a former member of AirTime500 and on August 21, 2007 it entered into a contract with AirTime, LLC.

Respondent refers Petitioner to the ***August 21, 2007 contract between Respondent and AirTime, LLC previously produced****. See also the Technical* [sic] *Seal of Safety License Agreement produced herewith*." Ex. A to Newberg Decl. (newly added information in italics).

Similarly, Clockwork's interrogatories also include numbers 22 and 23, which ask Barnaby to "[d]escribe all facts and *identify all documents* and things upon which Respondent bases its denials in Respondent's Answer to the Petition to Cancel" and to "[d]escribe all facts and *identify all documents* and things upon which Respondent bases its Affirmative Defenses in Respondent's Answer to the Petition to Cancel." *See* Ex. 1 to DeFord Decl. (emphasis added). The Supplemental Declaration and Barnaby's opposition make clear that Barnaby wants to rely on the Technician Seal of Safety licensing agreement in support of its feeble attempt to deny liability for fraud as well as to support its baseless forum-selection clause defense. *See* Barnaby Opp. at 2–4. The Exhibits and the information contained in the Supplemental Declaration are therefore responsive to interrogatories number 22 and 23, as well as interrogatory number 7, a fact which Barnaby again admitted when it *supplemented its responses to interrogatory numbers 22 and 23*, albeit insufficiently, prior to filing the Supplemental Declaration, the Reply, and the Exhibits. Ex. A to Newberg Decl. As a result, Barnaby's "interrogatory" argument falls apart in light of not only the plain language of interrogatory numbers 7, 22, and 23, but also because of Barnaby's own responses to those interrogatories.[2]

Again likely sensing the fatal flaws in its position, Barnaby makes a final attempt to excuse the late production of the Technician Seal of Safety licensing agreement by arguing that "Petitioner has always had access to these materials" so Petitioner cannot be "prejudiced" by Barnaby's late disclosure. Barnaby Opp. at 2, 4. But prejudice is not a prerequisite to relief under Rule 37(c); relief is warranted unless the failure to disclose was substantially justified or harmless. Fed. R. Civ. P. 37(c)(1); *Nutrilife Int'l, Inc. v. Foti*, 2014 WL 2174327, at *3 (T.T.A.B. May 14, 2014). Barnaby has provided no

[2] Barnaby does not – and cannot – argue that the Exhibits and the information contained in the Supplemental Declaration are non-responsive to several of Clockwork's Requests for Production. Those Exhibits and that information should therefore have been produced in response to those requests as well as identified in the interrogatories.

justification for its failure to produce the Exhibits or any of the newly disclosed information in the Supplemental Declaration and Reply in any of its three prior productions and responses that took place over the course of a year – again the last of which was made only after the Board entered an order compelling those responses under threat of sanction – and Barnaby's failure to produce that information and those documents is not harmless. At bottom, granting Barnaby's request to deny the Motion to Strike is the equivalent of allowing Barnaby to refuse to produce responsive documents and information until Barnaby decides that it is in its own interest to do so. Not only would such a result mean that neither Clockwork nor the Board can rely on Barnaby's representations (i.e., that it had already produced all responsive documents), it would allow Barnaby to engage in *exactly* the type of behavior that Rule 37(c) – and the Board's precedent – is designed to prevent. *See, e.g., Presto Prods.*, 9 U.S.P.Q.2d (BNA) at 1896 n.5. Thus, even if Barnaby had not already conceded that the Supplemental Declaration, the Exhibits, and the portions of the Reply relying on those documents should be stricken as an improper surreply, as lacking personal knowledge, and/or as containing information that Barnaby previously conceded or omitted in prior briefings,[3] Barnaby has confirmed that the Motion to Strike should also be granted under Rule 37(c)(1).

None of Barnaby's remaining arguments – which are a series of irrelevant and/or meritless points unrelated to the Motion to Strike, as well as personal, unfounded attacks on Clockwork – warrant a contrary result, and each argument is easily dismissed. First, Barnaby remarks that the Supplemental Declaration and Exhibits were timely filed. Barnaby Opp. at 3. Clockwork does not contest that point, and none of Clockwork's grounds in the Motion to Strike require a finding otherwise.

Second, Barnaby again complains – without any support – that "Petitioner served discovery on Respondent after the close of discovery in this case," arguing that this "'litigation' tactic . . . is clearly not intended to reveal the truth." Barnaby Opp. at 2. But as Clockwork has previously shown Barnaby's

[3] It is important to note that Clockwork is only spending the majority of its reply on this lack of production issue because that is the *only* issue in Clockwork's Motion to Strike to which Barnaby responded. The Motion to Strike can and should easily be granted because Barnaby failed to respond to, and therefore conceded, *all* of the other reasons brought up by Clockwork mandating the striking of the improper material.

"late service" argument is not only devoid of factual support (and in any event would be irrelevant as any objection was waived over a year ago), it actually makes no sense: the "litigation tactic" of *serving discovery* is designed to *reveal the truth*. Withholding discovery until one feels it is beneficial to oneself to produce it, on the other hand, is not.

Third, Barnaby claims that Clockwork filed the Motion to Strike because it is "unable to contradict the clear and convincing written testimony of Mr. Barnaby, and because the documentary evidence attached in support thereof is not only relevant, but damning to Petitioner's claims and defenses." *Id.* at 3; *see also id.* at 4. It then goes one step further to ask the Board to deny the "**Motion to Strike so that this case can be decided on what the facts reveal, versus what they conceal.**" *Id.* at 4–5 (emphasis in original); *see id.* at 1. These arguments are bewildering. As is clear from the Motion itself, Clockwork moved to strike the Supplemental Declaration, the Exhibits, and the portions of the Reply relying on those documents because they are improper under the Rules and precedent of the Board – in part because they were attached as an improper surreply to a different, fully briefed motion – not out of "fear" of the self-serving statements of Mr. Barnaby or Barnaby's "recently discovered," irrelevant documents and information.[4]

Even more curious is Barnaby's "plea" to "reveal, not conceal" the facts in this case. Clockwork's Motion to Strike is not concealing anything; it is asking Barnaby to play by the rules by which all other litigants – including Clockwork – abide. Barnaby has had ample opportunity over the course of this litigation to raise the information and documents contained in, and attached to, the Supplemental Declaration, and *it chose not to do so.* Moreover, Barnaby accusing Clockwork of trying to conceal the truth is the quintessential example of the "pot calling the kettle black." If a motion to strike

[4] Barnaby contends that the "written testimony of Mr. Charles Barnaby remains uncontradicted and should be given full consideration by this Board in deciding the pending summary judgment motions." Barnaby's Opp. at 4 (emphasis added). This statement is false; even if the Board were to deny the motion to strike, *all* of Barnaby's statements are contradicted by Clockwork's various filings on the pending motions in this case. And in any event, Barnaby's statement that the Supplemental Declaration should be considered when deciding the "pending summary judgment motion**s**" proves that Barnaby intended to use the Supplemental Declaration as a surreply to Clockwork's previously filed and fully-briefed motion– in violation of the Rules and the Board's precedent – providing additional confirmation that the Supplemental Declaration must be stricken.

can be considered an effort to "conceal" truthful testimony (which Clockwork's motion cannot be), Barnaby is certainly guilty: it filed a motion to strike three declarations and accompanying exhibits filed by Clockwork in support of its Motion for Summary Judgment, even though the information and documents contained therein had already been produced in this case. [Dkt. # 30] Barnaby's Mot. to Strike; *see also* [Dkt. # 32] Clockwork's Opp'n to Barnaby's Mot. for Sanctions. But even worse than that, a quick review of the record shows that Barnaby, not Clockwork, has consistently refused to "reveal" facts in this case by stonewalling every attempt by Clockwork to obtain discovery in this case, even after a Board Order granting a Motion to Compel. To suggest now that Clockwork – by seeking to enforce the Rules and Board precedent to maintain some semblance of decorum, procedure, and fairness in this proceeding – is trying to "hide the ball" is disingenuous to say the least.

And fourth, in its final effort to avoid the consequences of its own actions, Barnaby mounts personal, baseless attacks on Clockwork. *See, e.g.*, Barnaby Opp. at 2 ("Given Petitioner's complete failure to uphold and abide by the contract between the parties in this case, and Petitioner's late-service of discovery after the close of the discovery period in this case, Respondent would expect nothing more from Petitioner."). These contentions are untrue, devoid of support, and have *no* bearing on the legal issues before the Board. In fact, these personal attacks, plus all the other extraneous meritless points raised in Barnaby's "opposition," reinforce what anyone paying attention to this proceeding already knows: Barnaby – with total disregard for the truth – will say anything to get its way. *See, e.g.*, [Dkt. # 32] Clockwork's Reply in Supp. of Clockwork's Mot. for Summ. J. at 4–5 (demonstrating that Barnaby deliberately excised the facts in quotes taken from the Petition to Cancel to support its meritless "deficient pleading" argument); [Dkt. # 33] Clockwork's Opp'n to Barnaby's Mot. to Reopen or Amend RFAs 36 to 45 at 4–10 (demonstrating that Barnaby's "missing page" excuse for its failure to respond to RFA Nos. 36 to 45 is unsupportable and almost certainly a fabrication); [Dkt. # 33] Ex. 2, 4 to Patel Albers Decl. (demonstrating Barnaby's fluctuating and inconsistent positions with respect to service of the discovery requests); [Dkt. # 21] Clockwork's Mot. for Sanctions at 1–9 & Exhibits (providing an overview of Barnaby's refusal to honor its discovery obligations and demonstrating how several of the responses

provided are clearly false or intentionally evasive); [Dkt. # 27] Clockwork Reply in Supp. of Mot. for Sanctions at 3–8 (detailing Barnaby's excuses for its failure to comply with the Board's order compelling discovery, including the "Google calendar excuse").

Clockwork respectfully requests that the Board put an end to Barnaby's gamesmanship and grant the Motion to Strike the Supplemental Declaration, the Exhibits, and the portion of the Reply relying on those documents.

CONCLUSION

For the reasons stated above as well as those contained in Petitioner Clockwork IP, LLC's opening brief, Petitioner Clockwork IP, LLC respectfully requests that the Board grant its Motion to Strike, and strike from the record the Supplemental Declaration, the Exhibits, and the portions of the Reply relying on the Supplemental Declaration and the Exhibits.

Respectfully submitted,

CLOCKWORK IP, LLC

Filed via ESTTA: September 21, 2015 By: /Brad R. Newberg/

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CERTIFICATE OF SERVICE

On September 21, 2015, this document was sent by first class mail to the following counsel of record:

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/Amanda L. DeFord/_____
Amanda L. DeFord

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CLOCKWORK IP, LLC	)	
	)	
Petitioner,	)	
	)	
v.	)	**Cancellation No. 92057941**
	)	**Reg. No. 3,618,331**
BARNABY HEATING & AIR, and McAFEE HEATING AND AIR CONDITIONING CO., INC.	)	
	)	
Respondents.	)	

DECLARATION OF AMANDA L. DEFORD

I, Amanda L. DeFord, declare and state as follows:

1. I am an associate in the law firm of McGuireWoods LLP, counsel for Petitioner Clockwork IP, LLC ("Clockwork"). I make this declaration in support of Clockwork's Reply in Support of Clockwork's Motion to Strike. The following facts are within my knowledge and, if called and sworn as a witness, I could and would testify competently thereto. The matters referred to in this declaration are based upon my personal knowledge, and/or when referencing documents, such documents were reviewed by me and where applicable, were obtained and compiled at my instruction by others attorneys employed by McGuireWoods LLP, and if called as a witness I could and would testify competently thereto.

2. Attached hereto as **Exhibit 1** are true and accurate copies of Barnaby's September 25, 2014 responses to Clockwork's First Set of Interrogatories, First Set of Requests for Production, and First Set of Requests for Admission, as well as Barnaby's April 16, 2015 responses to Clockwork's First Set of Interrogatories, First Set of Request for Production, and First Set of Requests for Admission.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that

all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Executed this 21st day of September 2015 at Richmond, Virginia.

Amanda L. DeFord, esq.
McGuireWoods LLP

EXHIBIT 1 TO THE DEFORD DECLARATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration No. 3,618,331

Registration Date: May 12, 2009

Mark: COMFORTCLUB

Clockwork IP, LLC	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No. 92057941
	)	
BARNABY HEATING & AIR, LLC	)	
	)	
Respondent.	)	

RESPONDENT'S FIRST AMENDED OBJECTIONS AND RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES, FIRST REQUESTS FOR PRODUCTION, AND FIRST REQUESTS FOR ADMISSION

TO: PETITIONER CLOCKWORK IP, LLC AND ITS COUNSEL OF RECORD:

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and TBMP § 403, et seq., Respondent Barnaby Heating & Air, LLC ("Barnaby") serves its First Amended Objections and Answers to Petitioner's First Set of Interrogatories, Petitioner's First Requests for Production of Documents and Petitioner's First Requests for Admission.

GENERAL OBJECTIONS

Respondent objects to the Petitioner's First Set of Interrogatories, Petitioner's First Request for Production, and First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests appear to be dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014.

Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone-Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent reurges its objection to the definitions and instructions preceding the Petitioner's First Set of Interrogatories, Petitioner's First Requests for Production and Petitioner's First Requests for Admission to the extent they attempt to re-define commonly used words. Respondent, in answering these interrogatories will afford the words contained therein their common, ordinary meaning, except as the Federal Rules of Civil Procedure may specifically define them.

Respondent further objects to the definitions and instructions preceding the Petitioner's First Set of Interrogatories, Petitioner's First Requests for Production and Petitioner's First Requests for Admission to the extent that the requests seek to impose additional or different obligations upon Respondent other than those obligations that are placed on Respondent by the Federal Rules of Civil Procedure, the TBMP and the Trademark Trial and Appeal Board. Respondent will answer these interrogatories in accordance with the applicable rules.

Respondent also objects to the extent these requests are propounded on behalf of entities that are not parties to this litigation, such as Clockwork "SGI", "AirTime", "AirTime 500", "Success Day", "Success Academy", "CONGRESS", "SGI EXPO", "BRAND DOMINANCE", and "Senior Tech." The pleadings in this matter do not indicate how these entities are related to this litigation and without more Respondent is unable to adequately respond to Petitioner's discovery requests relating to these various entities. Respondent objects to any requests relating to these various entities because these requests cause Respondent to speculate. Respondent also objects to each of the discovery requests made by, or on behalf of the entities named above, based upon their ambiguity and vagueness, given Respondent unfamiliarity with these entities.

INTERROGATORIES

INTERROGATORY NO. 1:

Describe in detail how Respondent's Mark was first conceived of by Respondent.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Subject to the foregoing objections, and without waiving same, Respondent answers as follows:

Respondent's, Mr. Charlie Barnaby and his nephew, Shelby Cuellar, relying on their combined years of experience in the air conditioning and heating trade, and their ingenuity, met on multiple occasions at the offices of Respondent to discuss a new marketing concept and through those meetings, came up with the concept for membership sales to its existing customers and developed the Mark, COMFORTCLUB, as a means of marketing membership sales to its existing customers and to new customers throughout the Dallas-Fort Worth area. The COMFORTCLUB Mark and the marketing materials were developed at the end of 2007, very beginning of 2008, in-house by Mr. Barnaby and Mr. Cuellar. Neither Mr. Charlie Barnaby, nor Mr. Cuellar, relied upon any documents or materials allegedly produced or drafted by Petitioner, as these documents did not exist. In fact, until Respondent began its first use of the COMFORTCLUB Mark, and its first use in commerce, and filed its federal trademark application for its COMFORTCLUB Mark, Petitioner did not use the COMFORTCLUB Mark.

INTERROGATORY NO. 2:

State in detail the reasons for Respondent's selection of COMFORTCLUB and the filing of U.S.

Registration No. 3,618,331 therefore, the date that Respondent's Mark was selected and cleared, and identify all persons involved in the selection and clearance of Respondent's Mark.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent objects to the extent this request asks for information that the requesting party has had ample opportunity to discover on its own, given the existence of federal trademark application databases and records exists on the website, www.uspto.gov. FED. R. CIV. P. 26(b)(2)(C)(ii); *Avirgan v. Hull*, 932 F.2d 1572, 1580 (11th Cir. 1991). Respondent also objects to the extent this request calls for speculation on the part of Respondent with respect to all individuals involved in the "clearance of the [COMFORTCLUB] mark."

Respondent has been using the COMFORTCLUB mark continuously since at least as early as January 2008, a full five (5) years prior to the filing of Petitioner's Petition to Cancel. Given the number of years between Respondent's initial trademark application and today, Respondent would be forced to speculate about the identity of "all persons involved in the selection and clearance of Respondent's Mark." Respondent relies on the documents published by the U.S. Trademark Office, and located on the www.uspto.gov website for identification of those individuals at the U.S. Trademark Office responsible for "the selection and clearance of Respondent's Mark." Respondent also objects to the extent this request is vague, ambiguous and confusing and Respondent does not fully understand what is being requested when asked to "state in detail the reasons for Respondent's selection of COMFORTCLUB and the filing of U.S. Registration No. 3,618,331 therefore." Subject to the foregoing objections, and without waiving same, Respondent answers

as follows:

As set forth in response to Interrogatory No. 1 above, Respondent's, Mr. Charlie Barnaby, and his nephew, who was an employee of Respondent, developed the concept for marketing memberships to its clients and to new clients and devised of the COMFORTCLUB mark in-house. Mr. Barnaby was the ultimate decision-maker and decided to use the COMFORTCLUB Mark as a marketing phrase. It was also Mr. Barnaby, along with his nephew, who decided on using the COMFORTCLUB mark in commerce, as shown in the documents produced in this case. Respondent then filed for federal trademark protection of the Mark on its own, without the aid of an attorney or agent before the U.S. Trademark Office.

INTERROGATORY NO. 3:

State Respondent's annual expenditures in developing and marketing COMFORTCLUB.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 service date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent also objects to the extent this request calls for speculation on the part of Respondent with respect to apportioning the amount of money spent developing and marketing Respondent's business, versus developing and marketing the COMFORTCLUB Mark. Respondent has used the COMFORTCLUB Mark continuously for over five (5) years and Respondent has not independently budgeted its development and marketing of the COMFORTCLUB Mark. Respondent objects to the extent this request places an undue

burden on Respondent that outweighs its likely benefit. FED. R. CIV. P. 26(b)(2)(C)(iii). Subject to the foregoing objections and without waiving the same, in January 2008, Respondent initially ordered 5,000 double-sided cards to distribute to its customers and its service area throughout Collin County, Tarrant County, Dallas County, and its surrounding area marketing the COMFORTCLUB mark. Respondent paid approximately $10,000 on January 18, 2008 – January 25, 2008 for its initial marketing campaign and copies of some marketing materials. Respondent also developed a new website and online business profile incorporating the COMFORTCLUB mark as a strategic marketing campaign. Respondent estimates it has spent approximately $150,000 in developing and marketing the COMFORTCLUB Mark from January 2008 through today's date.

INTERROGATORY NO. 4: Describe all documents supporting or negating Respondent's priority and ownership of COMFORTCLUB.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 service date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent declines to provide a narrative answer to this interrogatory because the interrogatory asks for information that is available from its business and electronically stored records. Fed. R. Civ. P. 33(d).

Subject to the foregoing objections, and without waiving same, Respondent will rely on (1) its business records, (2) any and all relevant documents that relate in any way to Petitioner's claims and Respondent's

defenses, (3) those documents that Petitioner and Respondent will include on their exhibit lists, (4) any and all documents identified by Petitioner and Respondent in their Rule 26(A)(1) Disclosures and in Petitioner's most recent June 4, 2014 Supplemental Disclosures, (5) any and all documents on file with the U.S. Patent & Trademark Office, and the Trademark Trial and Appeal Board. Respondent will rely on (6) documents acquired through Petitioner's counsel, (7) documents located in Petitioner's business materials and documents Petitioner has served upon other parties – even if they are not a party to this action; (8) Petitioner's application to the U.S. Trademark Office, Application No. 85/880911, filed March 20, 2013; (9)

Pursuant to Rule 26(a)(1)(B) of the Federal Rules of Civil Procedure, Barnaby provides the following description of categories of documents, electronically stored information, and tangible things that Barnaby has in its possession, custody, or control and may use to support its claims or defenses. Unless otherwise noted, these documents, electronically stored information, and tangible things are located in Barnaby's offices or in other locations owned and controlled by Barnaby and copies may be obtained from Barnaby's counsel, Julie Celum Garrigue, Celum Law Firm, PLLC, 11700 Preston Rd., Suite 660, PMB 560, Dallas, Texas 75230.

a. Documents pertaining to the historical use, sales and advertising of Barnaby's services and Barnaby's COMFORTCLUB mark.

b. Advertisements and other documents pertaining to the continuous use of the "COMFORTCLUB" mark by Barnaby, from a date prior to the date of first use alleged by Clockwork in documents produced in this case and in documents filed with the U. S. Patent and Trademark Office, Application No. 85/880911 – COMFORTCLUB – by Petitioner.

c. Internet printouts from Barnaby's website at www.barnabyheatingandair.com.

d. Documents pertaining to the subscription, development and history of the website www.barnabyheatingandair.com.

e. Documents pertaining to the subscription, development and history of the website www.onehourheatandair.com.

f. Documents and franchise materials from the One Hour Heating & Air.

g. Petitioner's U.S. federal trademark application, Application No. 85/880911 – COMFORTCLUB – filed with the U.S. Trademark Office on March 20, 2013, signed under oath that Petitioner was filing its COMFORTCLUB trademark application based upon an "intent to use" the COMFORTCLUB Mark, and was not "actually using" the Mark in commerce.

Respondent expressly reserves the right to supplement this response.

INTERROGATORY NO. 5:

List and describe all Petitioner, SGI, or AirTime events, including without limitation, Success Day and Success Academy sessions, CONGRESS franchise events. SGI EXPO events, BRAND DOMINANCE events, Senior Tech events, and any similar events attended by Respondent since 2006.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 service date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent objects to the extent this request asks for information that the requesting party has had ample opportunity to discover on its own. FED. R. CIV. P. 26(b)(2)(C)(ii); *Avirgan v. Hull*, 932 F.2d 1572, 1580 (11th Cir. 1991). Respondent also objects to the extent this request calls for speculation on the part of Respondent with respect to the various entities named above. See Respondent's General Objections above. Subject to the foregoing objections and without waiving same, Respondent has attended an AirTime500 seminar a year from 2008 through 2013. At no time prior to Respondent's registration of the Mark did any of the course materials that were provided to Respondent contain reference to COMFORTCLUB.

INTERROGATORY NO. 6:

Describe Respondent's relationship with Petitioner, SGI, and AirTime 500.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 service date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent objects to the extent this request asks for information that the requesting party has had ample opportunity to discover on its own. FED. R. CIV. P. 26(b)(2)(C)(ii); *Avirgan v. Hull*, 932 F.2d 1572, 1580 (11th Cir. 1991). Respondent also objects to the extent this request calls for speculation on the part of Respondent with respect to the various entities named above. Respondent has no relationship with AirTime500. Respondent is a former member of AirTime 500, and is no longer a member.

INTERROGATORY NO. 7:

Describe and list all agreements between Respondent and Petitioner, Respondent and SGI, Respondent and AirTime 500, including without limitation all Acknowledgements of Non-Solicitation Policy or Confidentiality Agreements executed by Respondent.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 service date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things,

and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent objects to the extent this request asks for information that the requesting party has had ample opportunity to discover on its own. FED. R. CIV. P. 26(b)(2)(C)(ii); *Avirgan v. Hull*, 932 F.2d 1572, 1580 (11th Cir. 1991). Respondent also objects to the extent this request calls for speculation on the part of Respondent with respect to the various entities named above. Respondent is a former member of AirTime500. Respondent is not affiliated with any other entity listed above. Respondent was a paying member of AirTime 500 and has spent approximately $110,000 over the course of 6 years as a member. Respondent believes he has signed a total of two (2) agreements with AirTime500. Respondent does not recall what those documents were called, but they were the initial membership document and an additional document relating to the extension of that initial membership. Respondent believes these materials are in Petitioner's possession.

INTERROGATORY NO. 8:

Describe all goods and services with which Respondent's Mark has been, is intended to be, or is currently used and, for each good or service identified:

(a) state the date of first use anywhere and the date of first use in commerce and the nature of that first use in commerce;

(b) describe any periods of non-use;

(c) describe the distribution system for each such good or service including the channels of trade in which such good or service is or will be distributed;

(d) describe the methods by which Respondent has advertised or promoted the sale of each good or service, including, without limitation, the types of media in which such advertising and promotion has been conducted;

(e) identify and describe the geographic scope of any advertising and sales for each good or service provided;

(f) identify all instances of use of Respondent's Mark by Respondent or Respondent's licensees, including use in marketing materials, internal materials, and Respondent's websites.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 service date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Subject to the foregoing objection and without waiving same, Respondent has used the COMFORTCLUB mark continuously since, at least as early as January 18, 2008, possibly earlier. Respondent has used the COMFORTCLUB Mark in commerce since January 18, 2008. Respondent has had no periods of non-use. Respondent has the used the Mark as described in the description on file with the U.S. Trademark Office. Respondent has used the Mark continuously in its printed promotional materials and its marketing materials. Respondent has used the Mark on its website since some time in January 2008.

INTERROGATORY NO. 9:

Describe all facts and identify all documents and things relating to and showing Respondent's use of Respondent's Mark in commerce before and after Mr. Charles Barnaby's execution of the Success Academy "Acknowledgement of Non-Solicitation Policy" dated March 17, 2008.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 service date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery

devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Subject to the foregoing objections and without waiving the same, Respondent has used the COMFORTCLUB mark continuously and consistently since, at least as early as January 22, 2008. See Respondent's responses to Interrogatories Nos. 1, 2, 8, et seq.

INTERROGATORY NO. 10:

Identify and describe the types of customers to whom Respondent has provided or is providing COMFORT CLUB services and, for each type of customer:

(a) indicate the approximate fractional or percentage dollar volume of sales to each type of customer; and

(b) state the method by which Respondent has provided or is providing services identified with Respondent' s Mark, including without limitation, channels of trade utilized or being utilized by Respondent.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 service date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent also objects to the extent this request calls for speculation on the part of Respondent. Subject to the foregoing objections and without waiving the same, Respondent has used the COMFORTCLUB mark continuously and consistently since, at least as early as January 22, 2008 and has sold membership agreements to residential and commercial air conditioning and heating clients.

INTERROGATORY NO. 11:

State the annual revenues generated in connection with Respondent's services offered under Respondent's Mark from the date of first use to present.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 service date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent objects to the extent this request asks for information that the requesting party has had ample opportunity to discover on its own. FED. R. CIV. P. 26(b)(2)(C)(ii); *Avirgan v. Hull*, 932 F.2d 1572, 1580 (11th Cir. 1991).

Respondent also objects to the extent this request calls for speculation on the part of Respondent. Subject to the foregoing objections and without waiving the same, Respondent has used the COMFORTCLUB mark continuously and consistently since, at least as early as January 22, 2008. Since 2008, Respondent has generated the following income solely from the sales of Comfort Clubs under its COMFORTCLUB Mark. (These amounts do not include revenue generated from maintenance performed in the course of maintaining the memberships.)

2008 - $601.00
2009 - $950.00

2010 - $1,897.00
2011 - $5,354.00
2012 - $7,289.00
2013 – $9,773.00
2014 - $5,075.00

INTERROGATORY NO. 12:

State whether any search, inquiry, investigation, or marketing survey has been or is being conducted relating to the availability, registrability, or enforceability of Respondent's Mark and, if so, for each identify all documents relating to the search or investigation including, but not limited to, each report referring to or reflecting the search or investigation.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 service date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent objects to the extent this request asks for information that the requesting party has had ample opportunity to discover on its own. FED. R. CIV. P. 26(b)(2)(C)(ii); *Avirgan v. Hull*, 932 F.2d 1572, 1580 (11th Cir. 1991).

Respondent also objects to the extent this request calls for speculation on the part of Respondent with respect to whether a "search, inquiry, investigation, or marketing survey has been or is being conducted relating to the availability, registrability, or enforceability of Respondent's Mark". Respondent's COMFORTCLUB mark has been in use since at least as early as January 2008. Prior to fully developing

marketing materials for Respondent's mark, Respondent, through Charlie Barnaby and Shelby Cuellar searched the internet, the U.S. Patent & Trademark records, and generally conducted an online search to confirm that no one else was using the COMFORTCLUB Mark. No other uses of the Mark were found. Respondent does not have documents related to these searches, but would refer Petitioner to Respondent's U.S. federal trademark application.

INTERROGATORY NO. 13:

Describe in detail all instances in which Respondent has received objections or misdirected inquiries regarding its use and/or application for Respondent's Mark.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 service date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent objects to the extent this request asks for information that the requesting party has had ample opportunity to discover on its own. FED. R. CIV. P. 26(b)(2)(C)(ii); *Avirgan v. Hull*, 932 F.2d 1572, 1580 (11th Cir. 1991).

Respondent objects to this request to the extent it is vague, ambiguous and confusing. Respondent does not understand the request as drafted. Respondent also objects to the extent this request calls for speculation on the part of Respondent with respect to "instances in which Respondent has received objections or misdirected inquiries regarding its use and/or application for Respondent's Mark." Subject to the foregoing and without waiving same, Respondent is not aware of any objections or misdirected inquiries regarding its

use of its Mark.

INTERROGATORY NO. 14:

Describe in detail all facts and identify all documents and things relating to any alleged association between Petitioner and Respondent.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 service date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent objects to the extent this request asks for information that the requesting party has had ample opportunity to discover on its own. FED. R. CIV. P. 26(b)(2)(C)(ii); *Avirgan v. Hull*, 932 F.2d 1572, 1580 (11th Cir. 1991).

INTERROGATORY N0. 15:

Identify any members of the public known to Respondent to have been or who may have been confused with respect to Respondent's Mark as a result of, or with respect to, the use by Petitioner of the mark COMFORT CLUB; and:

(a) Describe each such instance of confusion; and

(b) Identify any persons who can testify regarding each such instance.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual

delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 service date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent objects to the extent this request asks for information that the requesting party has had ample opportunity to discover on its own. FED. R. CIV. P. 26(b)(2)(C)(ii); *Avirgan v. Hull*, 932 F.2d 1572, 1580 (11th Cir. 1991).

Respondent objects to this request to the extent it is vague, ambiguous and confusing. Respondent does not understand the request as drafted. Respondent also objects to the extent this request calls for speculation on the part of Respondent with respect to "any members of the public known to Respondent to have been or who may have been confused with respect to Respondent's Mark as a result of, or with respect to, the use by Petitioner of the mark COMFORT CLUB." Subject to the foregoing and without waiving same, Respondent is not aware of any members of the public to have been or who may have been confused with respect to Respondent's Mark.

INTERROGATORY NO. 16:

Identify each person that was a potential customer of Respondent who would have received any advertising or marketing material displaying Respondent's Mark.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 service date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's,

Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent objects to the extent this request asks for information that the requesting party has had ample opportunity to discover on its own. FED. R. CIV. P. 26(b)(2)(C)(ii); *Avirgan v. Hull*, 932 F.2d 1572, 1580 (11th Cir. 1991). Respondent also objects to the extent this request calls for speculation on the part of Respondent with respect to "potential customers" of Barnaby's regarding the advertising or marketing of Respondent's Mark. Respondent has been using the COMFORTCLUB mark continuously since 2008, a full five (5) years prior to Petitioner's Petition for Cancellation. Given number of years that Respondent has continuously used the COMFORTCLUB mark, Respondent would be forced to speculate in order to answer this request. Respondent also objects to the extent this request places an undue burden on Respondent that outweighs its likely benefit. FED. R. CIV. P. 26(b)(2)(C)(iii). Respondent also objects to the extent this request is overly broad and it inquires into matters that go beyond what is relevant to the parties' claims or defenses. FED. R. CIV. P. 26(b)(1). Respondent also objects to the extent this request is not relevant to the claims of Petitioner. FED. R. CIV. P. 26(b)(1).

INTERROGATORY NO. 17:

Describe Respondent's present or future plans to market goods and/or services offered under Respondent's Mark beyond the scope of that which Respondent currently offers.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 service date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery

period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent objects to the extent this request asks for information that the requesting party has had ample opportunity to discover on its own. FED. R. CIV. P. 26(b)(2)(C)(ii); *Avirgan v. Hull*, 932 F.2d 1572, 1580 (11th Cir. 1991). Respondent also objects to the extent this request calls for speculation on the part of Respondent with respect to "future plans" of Barnaby's regarding the advertising or marketing of "Respondent's Mark beyond the scope of that which Respondent currently offers." Respondent has been using the COMFORTCLUB mark continuously since, at least January 2008, a full five (5) years prior to Petitioner's Petition for Cancellation. Respondent has no present plans to change the way in which it uses its Mark. Respondent has assigned its Mark to McAfee Heating & Air Conditioning, Inc. and is operating under a perpetual license from McAfee.

INTERROGATORY NO. 18:

State the date of, and describe in detail the circumstances of, when you first became aware of Petitioner's Mark.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 service date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery.

TBMP § 403.01.

Respondent objects to the extent this request asks for information that the requesting party has had ample opportunity to discover on its own. FED. R. CIV. P. 26(b)(2)(C)(ii); *Avirgan v. Hull*, 932 F.2d 1572, 1580 (11th Cir. 1991). Respondent also objects to the extent this request calls for speculation on the part of Respondent with respect to "Petitioner's Mark". As set forth in Respondent's Answer, Respondent denies Petitioner owns the COMFORTCLUB Mark. Respondent has been using the COMFORTCLUB mark continuously since, at least January 2008, a full five (5) years prior to Petitioner filing its Petition for Cancellation. Subject to the foregoing objections, and without waiving same, Respondent first became aware of Petitioner's infringement of Respondent's trademark while conducting an online search some time in 2009.

INTERROGATORY NO. 19:

State all facts on which Respondent relies in support of the allegation in its application for U.S. Registration No. 3,618,331 that "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive...."

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 service date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent objects to the extent this request asks for information that the requesting party has had ample opportunity to discover on its own. FED. R. CIV. P. 26(b)(2)(C)(ii); *Avirgan v. Hull*, 932 F.2d 1572, 1580 (11th Cir. 1991). Respondent also objects to the extent this request is vague, ambiguous and confusing as written. Respondent also objects to the extent the request is misleading and is meant to mislead and confuse Respondent, in that the "allegation" as set forth above, is language set forth in the federal trademark registration materials and application, as adopted by the U.S. Patent and Trademark Office, and is not an independent assertion made by Respondent, absent Respondent's acknowledgement at the time it filed for the registration of its Mark, that it was the entity entitled to the registration and use of the COMFORTCLUB mark. Respondent developed the COMFORTCLUB Mark independent of Petitioner, as set forth in Interrogatory No. 1, Interrogatory No. 2, et seq. and as Mr. Barnaby would expound upon in a deposition in this case.

INTERROGATORY NO. 20:

State all facts on which Respondent relies in support of the allegation in its application for U.S. Registration No. 3,618,331 for COMFORTCLUB that Respondent was the rightful "owner of the trademark/service mark sought to be registered."

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 service date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent objects to the extent this request asks for information that the requesting party has had ample opportunity to discover on its own. FED. R. CIV. P. 26(b)(2)(C)(ii); *Avirgan v. Hull*, 932 F.2d 1572, 1580

(11th Cir. 1991). Respondent also objects to the extent this request is vague, ambiguous and confusing as written. Respondent also objects to the extent the request is misleading and is meant to mislead and confuse Respondent, in that the "allegation" as set forth above, is language set forth in the federal trademark registration materials and application, as adopted by the U.S. Patent and Trademark Office, and is not an independent assertion made by Respondent, absent Respondent's acknowledgement at the time it filed for the registration of its Mark, that it was the entity entitled to the registration and use of the COMFORTCLUB mark. Respondent also objects to the extent this request places an undue burden on Respondent that outweighs its likely benefit. FED. R. CIV. P. 26(b)(2)(C)(iii). Respondent also objects to the extent this request is overly broad and it inquires into matters that go beyond what is relevant to the parties' claims or defenses. FED. R. CIV. P. 26(b)(1). Respondent also objects to the extent this request is not relevant to Petitioner's claims.

INTERROGATORY NO. 21:

Identify all interactions Respondent had with Petitioner or Petitioner's legal representatives prior to the filing of its application for U.S. Registration No. 3,618,331.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 service date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent objects to the extent this request asks for information that the requesting party has had ample opportunity to discover on its own. FED. R. CIV. P. 26(b)(2)(C)(ii); *Avirgan v. Hull*, 932 F.2d 1572, 1580 (11th Cir. 1991). Respondent also objects to the extent this request is vague, ambiguous and confusing as

written. Respondent also objects to the extent this request is overly broad and it inquires into matters that go beyond what is relevant to the parties' claims or defenses. FED. R. CIV. P. 26(b)(1). Respondent also objects to the extent this request is not relevant to Petitioner's claims.

INTERROGATORY NO. 22:

Describe all facts and identify all documents and things upon which Respondent bases its denials in Respondent's Answer to the Petition to Cancel in this proceeding.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent objects to this interrogatory because it asks for opinions and contentions and is premature until additional discovery is conducted, including, but not limited to, the service of business records affidavits or certified business records requests, depositions on written questions, and the depositions of known, or unknown, fact witnesses are conducted and/or completed. Fed. R. Civ. P. 33(a)(2); see *Kartman v. State Farm Mutl. Auto. Ins. Co.*, 247 F.R.D. 561, 566 (S.D. Ind. 2007); see also *O2 Micro Int'l v. Monolithic Power Sys.* 467 F. 3d 1355, 1365 (Fed. Cir. 2006).

Respondent declines to provide a narrative answer to this interrogatory because the interrogatory asks for information that is available from its business and electronically stored records. Fed. R. Civ. P. 33(d).

Subject to the foregoing objections and without waiving same, in drafting Respondent's Answer,

Respondent denied the facts and claims in the numbered paragraphs corresponding to Petitioner's Petition to Cancel that were untrue and with which Respondent could not agree.

Namely, in Paragraph's 1-3, from Petitioner's Petition to Cancel, Petitioner alleges that it owns the trademark COMFORTCLUB, Application No. Application No. 85/880911, filed March 20, 2013. Petitioner does not own the Mark and has since abandoned its U.S. Trademark application. Petitioner also claims it owns the COMFORTCLUB mark, has been using it since 2006. Respondent denied this paragraph because it is untrue. It is untrue, because Petitioner has failed to produce any evidence that is has used the Mark since 2006, and Petitioner filed an application with the U.S. Trademark Office on March 20, 2013, alleging as its filing basis, an intent to use the COMFORTCLUB mark in commerce, rather than actual use, which indicates that as of March 20, 2013, Petitioner was not using the COMFORTCLUB Mark in commerce.

Petitioner's U.S. Trademark Application No. 85/880911 was abandoned by Petitioner. Petitioner willfully made false statements knowing they were punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001. Despite such knowledge, Petitioner willfully filed a federal trademark application, filed under 15 U.S.C. Section 1051(b), asserting that it believed it was entitled to use the Mark in commerce and that no other entity, including Respondent, had the right to use the Mark in commerce. This was a willfully false statement made by Petitioner in March 2013, just shortly before filing its Petition to Cancel.

Petitioner's Petition to Cancel contradicts even the most basic representations made by Petitioner in the written proceedings and verbal discussions in this case, including it's alleged date of first use in its Petition to Cancel of sometime in 2006, however the COMFORTCLUB mark was allegedly being used by Petitioner's franchisee's between 2003 to 2008 throughout the State of Texas. *See* Petitioner's Petition to Cancel, para. 7.

Petitioner signed a sworn declaration before the U.S. Trademark Office, and was warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001. Petitioner also declared under oath that under 15 U.S.C. Section 1051(b), (1) it believed it was entitled to use such mark in commerce; (2) that to the best of its knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and (3) that all statements made of

his/her own knowledge are true; and that all statements made on information and belief are believed to be true. Not only did Petitioner abandon its federal trademark application, but it has failed to provide any evidence it used the COMFORTCLUB Mark in commerce since 2006, and there are zero documents attached as exhibits to Petitioner's Petition to Cancel indicating any use by Petitioner of the COMFORTCLUB mark as early as 2003, or from 2003 to 2008.

Additionally, According to documents produced by Petitioner in this case, Petitioner's first date of use was approximately January 21, 2008, and its alleged use of the Mark on, or about January 21, 2008, appear in internal marketing materials that were never provided to Respondent. Petitioner's own documents directly contradict its claims in its Petition for Cancellation that it believes it used the Mark some time in 2006.

Respondent also bases its affirmative defenses on the timing of Petitioner's Petition for Cancellation, which was filed well over five (5) years after Respondent began using the COMFORTCLUB mark in commerce.

Respondent was never a One Hour franchisee and never attended any meeting whereat One Hour marketing materials were distributed.

Respondent's date of first use of its COMFORTCLUB mark precedes the date of any applicable membership agreement entered into between Respondent and Petitioner.

Respondent declines to provide a further narrative answer to this interrogatory because the interrogatory asks for information that is available from the Petition to Cancel and Answer and Affirmative Defenses, or is best addressed via a deposition. Fed. R. Civ. P. 33(d).

INTERROGATORY NO. 23:

Describe all facts and identify all documents and things upon which Respondent bases its Affirmative Defenses in Respondent 's Answer to the Petition to Cancel in this proceeding.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 service date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's,

Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent declines to provide a narrative answer to this interrogatory because the interrogatory asks for information that is available from its business and electronically stored records. Fed. R. Civ. P. 33(d). Subject to this objection, see documents produced by Respondent in response to Requests for Production in this proceeding. Respondent objects to this request to the extent it is over broad and unduly burdensome. Subject to the foregoing objections and without waiving the same, Respondent relies on:
(1) its business records, (2) documents produced by Petitioner in this case, (3) conversations Respondent has had with Petitioner's agents or employees, (4) representations made by Petitioner and its employees, (5) representations made by Petitioner's attorneys during the pendency of this matter and prior to the initiation of this matter, (6) Respondent's federal trademark application and registration materials, and (7) Respondent's memory, (8) Petitioner's federal trademark application and the corresponding file materials, (9) Petitioner's abandonment of its federal trademark registration, (10) any and all documents that Petitioner may produce in this case, or identify in its Disclosures, discovery documents, pretrial disclosures, or other materials filed in this proceeding. This interrogatory calls for a narrative from Respondent and to the extent Respondent has inadvertently failed to recall each and every single document, fact, or circumstance upon which it relies in defending against Petitioner's baseless claims, Respondent specifically reserves the right to supplement and amend this response.

INTERROGATORY NO. 24:

Identify all persons having knowledge of the denials asserted in Respondent's Answer to the Petition to Cancel, and describe the substance of those persons' knowledge.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case

closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent objects to this interrogatory because it asks for opinions and contentions and is premature until additional discovery is conducted, including, but not limited to, the service of business records affidavits or certified business records requests, depositions on written questions, and the depositions of known, or unknown, fact witnesses are conducted and/or completed. Fed. R. Civ. P. 33(a)(2); *see Kartman v. State Farm Mutl. Auto. Ins. Co.*, 247 F.R.D. 561, 566 (S.D. Ind. 2007); *see also O2 Micro Int'l v. Monolithic Power Sys.*, 467 F.3d 1355, 1365 (Fed. Cir. 2006).

Respondent declines to provide a narrative answer to this interrogatory because the interrogatory asks for information that is available from its business and electronically stored records. Fed. R. Civ. P. 33(d). Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request calls for speculation by Respondent as to each and every individual who may have knowledge about Respondent's prior use of the COMFORTCLUB mark. Respondent would refer Petitioner to Respondent's Rule 26(a)(1) disclosures for a list of those individuals Respondent believes have the most knowledge about the facts of this case. Subject to the foregoing objections and without waiving the same, a complete response regarding each individual's knowledge, is best addressed via a deposition of that individual by Petitioner, rather than a written interrogatory response from Respondent. Given the speculative nature of this interrogatory, Respondent bases each of its responses below on information and belief, and in the interest of cooperation, responds as fully as it can, with the understanding that it reserves the right to supplement or amend this response and Respondent's belief should in no way limit the sworn testimony of the individuals listed herein.

John Paccuca, Blue Stream Services, Inc., 850 Vandalia Street, Suite 120, Collinsville, IL 62234. It is believed that Mr. Paccuca has information and knowledge regarding Respondent's priority of use over that of Petitioner.

Travis Barnaby, 4620 Industrial Street, Suite C, Rowlett, TX 75088, an employee of Barnaby Heating & Air and has worked in Respondent's office and it is believed that Mr. Barnaby has information and knowledge regarding Respondent's priority of use over that of Petitioner.

Shelby Cuellar, 4800 Northway Drive, Apartment 2N, Dallas, TX 75206, the nephew of Respondent's Mr. Charlie Barnaby, an employee of Barnaby Heating & Air and has worked in Respondent's office and it is believed that Mr. Barnaby has information and knowledge regarding Respondent's priority of use over that of Petitioner.

Thomas Dougherty, 6305 Carrizo Drive, Granbury, TX 76049. It is believed that Mr. Dougherty has information and knowledge regarding Respondent's priority of use over that of Petitioner.

Paul Riddle, Vice President of Operations for Clockwork Home Services. Mr. Riddle has information regarding the history and use of the COMFORTCLUB mark by Barnaby, prior to use of the Mark by Petitioner.

Randy Kelley, 1510 Stevens St., The On Time Experts, Dallas, Texas 75218. Mr. Kelley is a former franchisee of Petitioner and it is believed that Mr. Kelley has information pertaining to Petitioner's use of the "Comfort Club" mark. Mr. Kelly is a former franchisee of Petitioner's and has knowledge of Respondent's priority of use of the COMFORTCLUB mark over that of Petitioner.

Mr. Jay Rol, Rol Air, Plumbing and Heating, 7510 Lannon Avenue NE, Albertville, MN 55301. Mr. Rol is a current user of the COMFORTCLUB mark under license from McAfee Heating & Air Conditioning, Inc. and has information pertaining to McAfee Heating & Air's use of the COMFORTCLUB mark in commerce.

Juli Cordray Barnaby Heating & Air LLC, 4620 Industrial Street, Suite C, Rowlett, TX 75088. Ms. Cordray is an employee of Barnaby Heating & Air and was in the office during Mr. Barnaby's telephone conversations with Petitioner's employee, Mr. Paul Riddle.

Greg McAfee, McAfee Heating & Air Conditioning, Inc., 4770 Hempstead Station Dr., Kettering, Ohio 45429. Mr. McAfee is the owner of McAfee Heating & Air Conditioning, Inc., the current assignee of the COMFORTCLUB mark from Respondent. It is believed that Mr. McAfee has knowledge of McAfee's priority over that of Petitioner, given McAfee's use of the COMFORTCLUB mark in commerce since 1999. See the documents produced in response to various Requests for Production, submitted herewith.

Charlie Barnaby owns and operates Barnaby Heating & Air and has intimate knowledge of the conception, development, marketing, and continuous use of the COMFORTCLUB mark by Respondent since January 2007.

INTERROGATORY NO. 25:

Identify all persons having knowledge of allegations and facts which you asserted in these interrogatory responses and describe the substance of those persons' knowledge.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent objects to this interrogatory because it asks for opinions and contentions and is premature until additional discovery is conducted, including, but not limited to, the service of business records affidavits or certified business records requests, depositions on written questions, and the depositions of known, or unknown, fact witnesses are conducted and/or completed. Fed. R. Civ. P. 33(a)(2); see Kartman v. State Farm Mutl. Auto. Ins. Co., 247 F.R.D. 561, 566 (S.D. Ind. 2007); see also O2 Micro Int'l v. Monolithic Power Sys. 467 F.3d 1355, 1365 (Fed. Cir. 2006).

Subject to the foregoing objections and without waiving same, see Respondent's response to Interrogatory No. 25, above.

INTERROGATORY NO. 26:

Identify each person whom Respondent may call to testify on his behalf in this Cancellation.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this

case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent also objects to the extent this request calls for Respondent to marshal its trial witness list, or disclose its trial strategies. Respondent also objects tot eh extent this request calls for speculation from Respondent as to whom Respondent may call to testify at the trial in this case. Subject to the foregoing objections and without waiving same, Respondent may call any and all individuals with knowledge of Respondent's first use of the COMFORTCLUB mark prior to use by Petitioner, and any and all individuals disclosed by Petitioner and/or Respondent in documents or discovery responses in this case.

Subject to the foregoing objections and without waiving same, see Respondent's response to Interrogatory No. 25, above. Respondent specifically reserves the right to supplement this response as this proceeding progresses.

INTERROGATORY NO. 27:

Describe all facts and identify all documents and things relating to and supporting Respondent's Affirmative Defenses in its Answer to Petitioner's Petition to Cancel.
Identify all documents and things on which Respondent intends to rely in this Cancellation.

ANSWER:

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery

period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Further, Respondent declines to provide a narrative answer to this interrogatory because the interrogatory asks for information that is available from its business and electronically stored records. Fed. R. Civ. P. 33(d).

Subject to the foregoing objections, and without waiving same, Respondent will rely on any and all documents that tend to support its defenses in this case, including, but not limited to any and all documents identified in Interrogatories Nos. 1 – 26, above. Respondent specifically reserves the right to supplement this response.

RESPONDENT'S OBJECTIONS AND RESPONSES TO PETITIONER'S FIRST REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS

REQUEST FOR PRODUCTION NO. 1:

All documents and things identified in Respondent's responses to Petitioner's First Set of Interrogatories to Respondent served in connection with this Cancellation.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to

extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Subject to the foregoing objections, and without waiving same, see documents attached hereto.

REQUEST FOR PRODUCTION NO. 2:

All documents and things not identified in Respondent's responses to Petitioner's First Set of Interrogatories to Respondent which nonetheless were reviewed or relied upon by Respondent in preparing answers to said Interrogatories, or which support Respondent's responses thereto.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Subject to the foregoing objections and without waiving same, see documents attached hereto.

REQUEST FOR PRODUCTION NO. 3:

All documents and things relating to the following:

(a) Respondent's creation, selection, development, clearance, approval, and adoption of Respondent's Mark, including all documents relating to any trademark searches which were conducted by or for Respondent in connection with Respondent's Mark, the results thereof, and samples of any marks or names considered and rejected.

(b) The content or result of any meeting or discussion at which Respondent's consideration, acquisition, selection, approval, or adoption of Respondent's Mark were discussed;

(c) Further investigations conducted by or on behalf of Respondent into the current status of any marks uncovered by trademark searches which were conducted by or for Respondent in connection with Respondent' s Mark;

(d) Information, notice, or opinion(s) concerning conflict or potential conflict associated with your adoption, use, or registration of Respondent's Mark;

(e) All communications in which a person has recommended or cautioned against Respondent's acquisition, selection, development, adoption , or use of Respondent' s Mark; and

(f) All information, notices, or opinions concerning the availability of Respondent' s Mark for use or registration.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June

5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 4:

All documents and things relating to communications issued or received by Respondent relating to Respondent's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely

request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 5:

All documents and things relating to communications issued or received by Respondent relating to Petitioner's Marks.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Had Petitioner served a timely request to obtain copies of these documents, Respondent may have been able to provide this material to Petitioner. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for these documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.* If the parties can agree to a reciprocal extension of the discovery deadlines in this case, Respondent will provide assistance to Petitioner in retrieving electronically stored records.

Subject to the foregoing objections, and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 6:

All documents and things relating to the first use anywhere and the first use in commerce of Respondent's Mark by or on behalf of Respondent.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 7:

All documents and things relating to or identifying the nature of Respondent's business, including all products and services ever offered by Respondent.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

ulate about what information Petitioner is seeking from Respondent via this particular request.

Subject to the foregoing objections, and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 8:

Representative examples - such as products, labels, packaging, tags, brochures, advertisements, promotional items, point of sale displays, websites, informational literature, stationery, invoices, or business cards - showing each and every variation in the form of Respondent's Mark which Respondent (or other parties with Respondent's consent) has used, uses, or plans to use depicting Respondent's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of

Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 9:

All documents and things relating to any plans which Respondent has to expand the types of goods or services currently offered under Respondent's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the

discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, none.

REQUEST FOR PRODUCTION NO. 10:

All documents and things relating to the types of customers to whom Respondent has provided or is providing products or services identified by Respondent' s Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 11:

All documents supporting or negating Respondent's priority and ownership of COMFORTCLUB, including all documents and things relating to the first use anywhere and the first use in commerce of Petitioner's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 12:

All agreements and policies between Petitioner and Respondent, Respondent and SGI, and Respondent and AirTime 500.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to

extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

ulate about what information Petitioner is seeking from Respondent via this particular request.

REQUEST FOR PRODUCTION NO. 13:

All written communications between Petitioner and Respondent, Respondent and SGI, and Respondent and AirTime 500.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 14:

All documents and things relating to Respondent's attendance of any Success Day or Success Academy events, CONGRESS franchise events, SGI EXPO events, BRAND DOMINANCE events, and Senior Tech events, including without limitation all 2008 events and sessions.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, Respondent did not attend the majority of the seminars listed above and Respondent is unfamiliar with many of the entities listed above. See Respondent's general objections to Petitioner's definitions, as set forth above. Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 15:

All documents and things relating to Respondent's past, present, and future marketing plans and methods for products or services identified by Respondent's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014.

Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 16:

All documents and things relating to your distribution of and trade channels for the services identified by Respondent' s Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v.*

Gulf Oil Corp., 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 17:

All documents and things relating to communications between Respondent and third parties concerning the advertisement or promotion of Respondent's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 18:

All documents and things relating to communications between Respondent and any third party, including consumers, concerning Respondent's Mark or Petitioner's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 19:

All documents and things relating to expenses for advertisement or promotion of Respondent's Mark, including all documents that summarize or tabulate existing or projected advertising expenditures and expenses associated with Respondent's use of Respondent's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of

Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 20:

All documents and things relating to communications between Respondent and any third party, including consumers and Petitioner franchisees, concerning products and services on which Respondent uses, or has used, the term COMFORTCLUB in commerce.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period.

See Smith International, Inc. v. Olin Corp., 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 21:

All documents and things relating to Petitioner 's Marks, including all documents and things relating to any search, inquiry, investigation, or marketing survey that has been, is being, or will be conducted relating to Petitioner's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 22:

All documents and things relating to any possibility of confusion, mistake, or deception as to the source of original or sponsorship of any product or service arising out of use of Respondent's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 23:

All documents and things relating to any likelihood of confusion, deception or mistake between Respondent's Mark and Petitioner's Marks, including Petitioner's Mark as used by licensee.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014.

Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 24:

All documents and things relating to any instances of actual confusion between Respondent's Mark and Petitioner's Marks, including but not limited to documents arid things relating to misdirected mail, e-mail, or telephone calls.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period.

See Smith International, Inc. v. Olin Corp., 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 25:

All documents and things relating to any instances of actual confusion regarding a connection between Petitioner or Petitioner's services and Respondent.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 26:

All documents and things relating to Respondent's communications with third parties regarding this

proceeding.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 27:

All documents and things relating to any communications between Respondent and Petitioner concerning Respondent's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the

morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for these documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objections, and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 28:

All documents and things relating to any communications between Respondent and any other party who has used or owns any rights in any names or marks, including design marks, which are comprised of or include the words COMFORT or CLUB.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of

documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 29:

All documents and things relating to the strength or distinctiveness of Respondent's Mark or Petitioner 's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 30:

All documents and things relating to any application(s) submitted by Respondent to register, maintain, or modify Respondent's Mark on any trademark register worldwide, and any registration(s) issued as a result thereof.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 31:

All documents and things identified in Respondent's Initial Disclosures.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of

discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 32:

All documents and things not identified in Respondent's Initial Disclosures which nonetheless were reviewed or relied upon in preparing Respondent's Initial Disclosures.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 33:

All documents showing or relating to Respondent's awareness of, and first dates of awareness of Petitioner's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 34:

All documents and things showing use of the term COMFORTCLUB in commerce by Respondent in connection with the sale, offer for sale, and/or distribution of any product or service at any time.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 35:

All documents relating to or detailing Respondent's selection of Respondent's Mark and the decision to file a U.S. Trademark application for COMFORTCLUB.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their

entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 36:

All documents relating to the goods and services with which Respondent's Mark has been, is intended to be, or is currently used.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 37:

All documents and things upon which Respondent bases its denial of Petitioner's allegation in paragraph 8 of Petitioner's Petition to Cancel in this proceeding that "Respondent, Barnaby Heating and Air, has been an AirTime member and licensee of Petitioner since August 21, 2007."

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 38:

All documents and things upon which Respondent bases its denial of Petitioner's allegation in paragraph 22 of Petitioner's Petition to Cancel in this proceeding that "Petitioner introduced its COMFORTCLUB mark at CONGRESS in 2006 ... and has come to be associated with the maintenance plans offered by franchisees and member affiliates for the performance and delivery of home heating, air conditioning and ventilation services."

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 39:

All documents and things upon which Respondent bases its denial of Petitioner' s allegation in paragraph 23 of Petitioner's Petition to Cancel in this proceeding that "Petitioner has priority based upon its prior use and contractual ownership of Petitioner's 'COMFORTCLUB' Mark."

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the

morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 40:

All documents and things upon which Respondent bases its denial of Petitioner's allegation in paragraph 23 of Petitioner's Petition to Cancel in this proceeding that Respondent's COMFORTCLUB mark is virtually identical to Petitioner's COMFORTCLUB in sound, appearance, connotation, and form.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 41:

All documents and things upon which Respondent bases its denial of Petitioner's allegation in paragraphs 36 and 37 of Petitioner's Petition to Cancel in this proceeding.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 42:

All documents and things upon which Respondent bases its other denials and admissions in. Respondent's Answer to the Petition to Cancel in this proceeding.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the

date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 43:

All documents and things upon which Respondent bases its First Affirmative Defense in paragraph 41 - Failure to State a Claim.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period.

See Smith International, Inc. v. Olin Corp., 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 44:

All documents and things upon which Respondent bases its Second Affirmative Defense in paragraph 42- Priority.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 45:

All documents and things upon which Respondent bases its Third Affirmative Defense in paragraph 43 - Fair Use.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 46:

All documents and things upon which Respondent bases its Fourth Affirmative Defense in paragraph 44 - Statute of Limitations.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their

entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 47:

All documents and things upon which Respondent bases its Fifth Affirmative Defense in paragraph 45 - Estoppel.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 48:

All documents and things upon which Respondent bases its Sixth Affirmative Defense in paragraph 46 - Laches.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 49:

All documents and things upon which Respondent bases its Seventh Affirmative Defense in paragraph 47 - Acquiescence.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the

morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 50:

All documents and things upon which Respondent bases its Eighth Affirmative Defense in paragraph 48 - No Liability.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 51:

All documents and things upon which Respondent bases its Ninth Affirmative Defense in paragraph 49 - No Standing.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto. Trial and Appeal Board.

REQUEST FOR PRODUCTION NO. 52:

All documents and things upon which Respondent bases its Tenth Affirmative Defense in paragraph 50 - Non-Use and Abandonment.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but

Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 53:

All documents and things upon which Respondent bases its Eleventh Affirmative Defense in paragraph 51.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the

discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 54:

All documents and things identified in Respondent's Answer to the Petition to Cancel in this proceeding.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 55:

All documents referring or relating to Respondent' s uses of any term comprised of or containing "COMFORT " and/or "CLUB" including but not limited to use as the common commercial name for a type of product or service, to describe a feature or characteristic of any product or service, as a verb, or in lowercase letters.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 56:

All documents and things sufficient to identify the particular market or market segment in which Respondent's services compete, and all competitors.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their

entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 57:

Representative examples of advertising and promotional materials in each media used (e.g., print, television, radio, internet, direct mail, billboards) featuring, displaying, or containing Respondent's Mark

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 58:

Representative samples of all websites, advertisements, catalogs, brochures, posters, flyers, and any other printed or online promotional materials that have ever been used by Respondent in connection with Respondent's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 59:

Documents sufficient to show all media (e.g., print, television, radio, internet, direct mail, billboards) in which Respondent has advertised or promoted Respondent's Mark, including but not limited to media schedules and advertising plans.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 60:

Documents sufficient to show the type, identity, and geographic distribution of all media in which Respondent has advertised or intends to advertise goods and services using Respondent's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their

entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 61:

All press releases, articles, and clippings relating to or commenting upon Respondent's Mark or Respondent's services.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 62:

Documents sufficient to show all forms in which Respondent has depicted, displayed, or used Respondent's Mark, including but not limited to all designs, stylizations, and/or logos.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 63:

To the extent not covered by other requests, all documents referring or relating to investigations, searches, research focus groups, reports, surveys, polls, studies, searches, and opinions conducted by or for Respondent relating or referring to Respondent's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the

date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, none.

REQUEST FOR PRODUCTION NO. 64:

All documents referring or relating to any objections Respondent has received concerning his use and/or registration of Respondent's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of

documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 65:

Documents sufficient to identify the annual sales revenues in units from sales of goods and services by Respondent under Respondent's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

ulate about what information Petitioner is seeking from Respondent via this particular request.

REQUEST FOR PRODUCTION NO. 66:

Documents sufficient to identify any advertising expenses incurred by Respondent in connection with use

of Respondent' s Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 67:

Documents sufficient to identify the annual advertising and promotional expenditures for Respondent's Goods from the first use of Respondent's Mark to the present.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to

extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 68:

All documents referring or relating to Respondent's annual expenditures for developing and marketing Respondent's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 69:

All documents referring or relating to judicial or administrative proceedings in any forum referring or relating to Respondent' s Mark and/or Respondent's Goods, other than this proceeding.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, see the materials found on the site, www.uspto.gov, relating to the application and registration of Respondent's COMFORTCLUB mark, see also all responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 70:

All documents referring or relating to all adversarial proceedings to which Respondent has been a party , including domain name disputes, inter-party proceedings before the U.S. Trademark Trial & Appeal Board or other nation 's trademark offices, or lawsuits filed in a court anywhere in the world.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014.

Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, none.

REQUEST FOR PRODUCTION NO. 71:

All documents referring or relating to agreements Respondent has entered into (oral or written) relating to Respondent's Mark, including but not limited to development agreements, license agreements, co-branding agreements, consent agreements, coexistence agreements, assignments, settlement agreements, and advertising agreements.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of

documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, see responsive documents attached hereto. Respondent will make additional materials available to counsel for Petitioner for inspection and copying at Respondent's office at a mutually agreeable date and time.

REQUEST FOR PRODUCTION NO. 72:

All documents and things sufficient to identify all uses of Respondent's Mark by Respondent or Respondent's licensees, including use in marketing materials, internal materials, and Respondent's websites.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, see responsive documents attached hereto. Respondent will make additional materials available to counsel for Petitioner for inspection and copying at Respondent's office at a mutually agreeable date and time.

REQUEST FOR PRODUCTION NO. 73:

All documents and things sufficient to identify the meaning of Respondent's Mark and the messages that Respondent intends to convey to consumers with respect to Respondent's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request.

REQUEST FOR PRODUCTION NO. 74:

All documents and things sufficient to identify the ways in which the type of consumer to whom Respondent has been marketing or will market its goods and services under Respondent's Mark is different

from the type of consumer to whom Respondent believes Petitioner is marketing its goods and services.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

ulate about what information Petitioner is seeking from Respondent via this particular request.

REQUEST FOR PRODUCTION NO. 75:

All documents referring or relating to all known third-party uses of terms comprised of or containing "Comfort" and "Club" in connection with HVAC or any other goods or services offered by Respondent, or use of "comfortclub" as the common commercial name for a type of product or service, to describe a feature or characteristic of any product or service, as a verb, or in lowercase letters.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of

Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, see responsive documents attached hereto, Respondent will make additional materials available to counsel for Petitioner for inspection and copying at Respondent's office at a mutually agreeable date and time.

REQUEST FOR PRODUCTION NO. 76:

All documents relied upon by Respondent to support the allegation in its application for U.S. Registration No. 3,618,331 that "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive."

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the

morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 77:

All documents relied upon by Respondent to support the allegation in its application for U.S. Registration No. 3,618,331 that Respondent was the rightful "owner of the trademark/service mark sought to be registered."

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, see responsive documents attached hereto, Respondent will make additional materials available to counsel for Petitioner for inspection and copying at Respondent's office at a mutually agreeable date and time.

REQUEST FOR PRODUCTION NO. 78:

All documents referring or relating to any and all interactions Respondent had with Petitioner or Petitioner's legal representatives prior to the filing of its application for U.S. Registration No. 3,618,331.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 79:

All documents referring or relating to Respondent's reasons for selecting the mark "COMFORTCLUB" as a compounded or unitary mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 80:

All documents referring or relating to the similarity of Respondent's COMFORTCLUB mark and Petitioner's COMFORTCLUB mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period.

See Smith International, Inc. v. Olin Corp., 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 81:

All documents referring or relating to the priority and seniority of Petitioner's COMFORTCLUB mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 82:

All documents referring or relating to the similarity in the services listed in the Respondent's Mark and the services marketed or sold by Petitioner under Petitioner's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objections, and without waiving same, Petitioner and Respondent are not similar entities, as Petitioner is not an actual provider of air conditioning and heating services, and thus, Petitioner's application is further suspect and contains additional willful misstatements, and has been abandoned.

REQUEST FOR PRODUCTION NO. 83:

All documents and things relating to Respondent's document retention and destruction policies or guidelines, if any, which may relate to documents covered by any request herein.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the

morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, none.

REQUEST FOR PRODUCTION NO. 84:

All documents Respondent intends to introduce into evidence in this proceeding.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

As written, Petitioner's request would require Respondent to marshal its evidence, in direct contradiction

of the existing scheduling order and deadlines in this proceeding. Respondent specifically reserves the right to supplement this response in accordance with the deadlines in this proceeding.

REQUEST FOR PRODUCTION NO. 85:

All documents on which Respondent intends to rely during the testimony period in support of Respondent's case and all other documents relating to such documents.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

As written, Petitioner's request would require Respondent to marshal its evidence, in direct contradiction of the existing scheduling order and deadlines in this proceeding. Respondent specifically reserves the right to supplement this response in accordance with the deadlines in this proceeding.

REQUEST FOR PRODUCTION NO. 86:

For each fact witness whom Respondent intends to call in this proceeding, please produce the following:

(a) A resume or employment history;

(b) A written report containing a complete statement of all of his or her opinions and

conclusions relevant to this case and the grounds therefor; and

(c) Other information considered by the witness in forming his or her opinions.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

As written, Petitioner's request would require Respondent to marshal its evidence, in direct contradiction of the existing scheduling order and deadlines in this proceeding. Respondent specifically reserves the right to supplement this response in accordance with the deadlines in this proceeding.

REQUEST FOR PRODUCTION NO. 87:

All documents and things supporting cancellation of Respondent's Mark because Respondent perpetrated fraud on the USPTO.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014.

Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, none.

REQUEST FOR PRODUCTION NO. 88:

All documents and things supporting Respondent' s position that it did not perpetrate fraud on the USPTO with respect to Respondent's Mark.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period.

See Smith International, Inc. v. Olin Corp., 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections and without waiving same, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 89:

All documents and things relating to each expert witness Respondent has engaged in connection with this proceeding, including but not limited to, resumes, curriculum vitae, references, promotions, matters, opinions, reports, exhibits, and communications concerning any issue presented or considered herein.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, none. Respondent specifically reserves the right to supplement this response.

REQUEST FOR PRODUCTION NO. 90:

Any written report, memorandum, opinion, or other written documents and things regarding either Respondent's Mark or Petitioner's Marks that was prepared by any expert witness, regardless of whether Respondent presently intends to call such expert witness in this proceeding.

ANSWER:

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objections, and without waiving same, none. Respondent specifically reserves the right to supplement this response.

RESPONDENT'S OBJECTIONS AND RESPONSES TO PETITIONER'S FIRST REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO.1:

Respondent has no valid rights in the mark COMFORTCLUB or any variation thereof. At no time was Respondent the owner of COMFORTCLUB.

Answer:

Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 2:

Petitioner is the rightful owner of the COMFORTCLUB Mark as used for Petitioner's services and Respondent's services in the U.S.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to

extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 3:

At no time was Respondent the owner of COMFORTCLUB.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 4:

Petitioner's Mark has been in use in interstate commerce by Petitioner and/or licensees of Petitioner since at least as early as 2006.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 5:

Respondent has been an AirTime 500 member and licensee of Petitioner since August 21, 2007, by signing the AirTime Member Agreement, Respondent agreed that "AirTime wholly owns and/or has protectable legal rights in and to the AirTime Resources whether ...(b) the AirTime Resources are subject to copyright, trademark ,tradename, and/or patent rights of AirTime ..." In the Member Agreement, Respondent agreed "[n]ot to use any or all of the AirTime Resources for any purpose other than your valid participation in the AirTime Program . ..[and N]othing in this Agreement shall be construed as conveying to you ...(ii) any license to use, sell, exploit, .copy or further develop any such AirTime Resources." Petitioner's Mark falls under the umbrella of the term "AirTime Resources" as described in said Member Agreement.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of

discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 6:

Respondent attended an SGI "Senior Tech" course in March, 2008. Petitioner's COMFORTCLUB Mark and Petitioner's services were discussed and promoted to Airtime members and licensees at the SGJ "Senior Tech" course in March, 2008.

Answer:

Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this

case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 7:

Respondent, without the authorization of Petitioner, filed Application No. 77/420,784 for COMFORTCLUB after attending an SGI course covering Petitioner's services rendered under Petitioner's Mark.

Answer:

Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 8:

At all relevant times, Respondent's use of COMFORTCLUB was only as a licensee of Petitioner pursuant to Respondent's AirTime Member Agreement. Respondent was never an owner of the COMFORTCLUB

mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 9:

Respondent' s Application No. 77/420,784 for Respondent's Mark was filed fraudulently. Respondent' s Mark is thus void.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of

documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 10:

Petitioner used the mark COMFORTCLUB m U.S. commerce before any use of the mark COMFORTCLUB in U.S. commerce by Respondent commenced.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 11:

Prior to March 13, 2008, the filing of Application No. 77/420,784, Respondent was aware of Petitioner's senior and prior right in Petitioner's Mark for both Petitioner's services and Respondent's services.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 12:

Respondent's Mark is identical to Petitioner's Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also

dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 13:

Respondent's Mark is confusingly similar to Petitioner's Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 14:

Respondent's services are the same as Petitioner's services.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 15:

Respondent's services are sold through the same channels of trade as Petitioner's services and directed to the same consumers.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery

devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 16:

Respondent is no longer an AirTime Member and is using the COMFORTCLUB mark without authorization from Petitioner.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), as drafted, Respondent is unable to admit or deny this request.

REQUEST FOR ADMISSION NO. 17:

Respondent's Mark so closely resembles Petitioner's Mark such as to cause confusion, mistake, or

deception, and/or to cause the consuming public to believe that Respondent's services marketed or sold in connection with Respondent's Mark originate with or are sponsored, endorsed, licensed, authorized and/or affiliated or connected with Petitioner and/or Petitioner' s services in violation of Section 2(d) of the Lanham Act.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 18:

Petitioner is and will be damaged by registration of Respondent's Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the

morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 19:

Petitioner's rights in Petitioner's Mark predate any use by Respondent of Respondent' s Mark in U.S. commerce.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 20:

All use of the COMFORTCLUB mark by Respondent inured to the benefit of Petitioner, the rightful owner of the COMFORTCLUB mark in the U.S.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 21:

On March 13, 2008, Respondent's Owner and Principle Partner, Mr. Charles Barnaby, was aware of Petitioner's senior rights in COMFORTCLUB but signed a fraudulent declaration in support of Respondent's Application No. 77/420,784, with an intent to deceive. the U.S. Trademark Office into granting registration of Respondent's Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also

dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO.22:

On March 13, 2008, Respondent's Owner and Principle Partner, Mr. Charles Barnaby, was aware of that it was not the rightful owner of the COMFORTCLUB Mark and Application No. 77/420,784, but signed a fraudulent declaration in support of Respondent's application for registration of Respondent's Mark, with an intent to deceive the U.S. Trademark Office into granting registration of Respondent's Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 23:

Respondent's Declaration in Application No. 77/420,784 stating that "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive...." is false.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 24:

Petitioner established rights in the United States in its COMFORTCLUB Mark prior to 2008.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the

date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION No. 25:

Since as early as 2006, Petitioner has established extensive, common-law rights in COMFORTCLUB Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the

discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 26:

Petitioner's rights in COMFORTCLUB date from prior to the filing date of Respondent's Mark or Respondent' s alleged use in United States commerce of Respondent's Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 27:

Respondent' s Mark is not entitled to continued registration pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1 125(d) because it is likely to cause confusion with the Petitioner' s Mark.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but

Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 28:

Applicant committed fraud on the U.S. Patent and Trademark Office.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.
Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 29:

Respondent's First Affirmative Defense in paragraph 41 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 30:

Respondent' s Second Affirmative Defense in paragraph 42 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to

extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 31:

Respondent' s Third Affirmative Defense in paragraph 43 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 32:

Respondent' s Fourth Affirmative Defense in paragraph 44 of its Answer to Petitioner's Petition to Cancel

is without merit and unsupported by evidence.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 33:

Respondent' s Fifth Affirmative Defense in paragraph 45 of its Answer to Petitioner' s Petition to Cancel is without merit and unsupported by evidence.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of

documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 34:

Respondent's Sixth Affirmative Defense in paragraph 46 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

REQUEST FOR ADMISSION NO. 35:

Respondent' s Seventh Affirmative Defense in paragraph 47 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter. Subject to the foregoing objection(s), denied.

Dated: September 25, 2014

Respectfully,

Barnaby Heating & Air, LLC

/s/ Julie Celum Garrigue
JULIE CELUM GARRIGUE

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Attorney for Respondent
Barnaby Heating & Air, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **RESPONDENT'S FIRST AMENDED OBJECTIONS AND RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES, FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS, AND FIRST REQUEST FOR ADMISSION** was served on counsel for Petitioner, this 24th day of September 2014, by sending the same via Email to:

Purvi J. Patel
Purvi.Patel@haynesboone.com
Haynes and Boone, LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219

/s/ Julie Celum Garrigue
JULIE CELUM GARRIGUE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration No. 3,618,331

Registration Date: May 12, 2009

Mark: COMFORTCLUB

Clockwork IP, LLC	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No. 92057941
	)	
BARNABY HEATING & AIR, LLC	)	
	)	
Respondent.	)	

RESPONDENT'S SECOND AMENDED OBJECTIONS AND RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES, FIRST REQUESTS FOR PRODUCTION, AND FIRST REQUESTS FOR ADMISSION

TO: PETITIONER CLOCKWORK IP, LLC AND ITS COUNSEL OF RECORD:

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and TBMP § 403, et seq., Respondent Barnaby Heating & Air, LLC ("Barnaby") serves its SECOND Amended Objections and Answers to Petitioner's First Set of Interrogatories, Petitioner's First Requests for Production of Documents and Petitioner's First Requests for Admission.

Respondent, in answering these interrogatories, requests for production, and requests for admission will afford the words contained therein their common, ordinary meaning, except as the Federal Rules of Civil Procedure may specifically define them. Respondent answers these interrogatories, requests for production, and requests for admission in accordance with the Federal Rules of Civil Procedure, the TBMP and the Trademark Trial and Appeal Board applicable rules.

The pleadings in this matter do not indicate how the following entities are related to this litigation: "Clockwork "SGI"", "AirTime", "AirTime 500", "Success Day", "Success Academy", "CONGRESS", "SGI EXPO", "BRAND DOMINANCE", and "Senior Tech." These entities are not parties to this cancellation proceeding and without more information about each of these entities, or how they are related to Petitioner, Clockwork IP, LLC. Until Petitioner amends its pleadings in this case, or better provides an explanation of how any of the above entities relate to Petitioner, Respondent is unable to provide accurate responses to Petitioner's discovery requests about these various entities.

INTERROGATORIES

INTERROGATORY NO. 1:

Describe in detail how Respondent's Mark was first conceived of by Respondent.

ANSWER:

Mr. Charlie Barnaby is the President of Barnaby Heating & Air, LLC located in Rowlett, Texas. Mr. Charlie Barnaby and his nephew, Shelby Cuellar, relying on their combined years of experience in the air conditioning and heating trade, and their ingenuity, conceived of, created, and developed the COMFORTCLUB mark as a means of marketing club membership sales to its existing customers and to new customers throughout Rowlett, Texas and the Dallas-Fort Worth area. Mr. Barnaby and Mr. Cuellar conceived of and developed the COMFORTCLUB while working at Barnaby Heating & Air in Rowlett, Texas beginning sometime in the Fall and Winter of 2007. Following the conception and development of the COMFORTCLUB mark, and in an effort to market COMFORTCLUB club membership sales to its existing customers and to new customers throughout Rowlett, Texas and the Dallas-Fort Worth area, on January 28, 2008, Barnaby Heating & Air ordered five thousand (5,000) 3.5 X 8.5 double sided Rip Hangers from 48HourPrint.com of Quincy, Massachusetts that incorporated and displayed Respondent's COMFORTCLUB mark.

Neither Mr. Charlie Barnaby, nor Mr. Cuellar, relied upon any documents or materials of Petitioner's while creating and developing Respondent's COMFORTCLUB mark.

INTERROGATORY NO. 2:

State in detail the reasons for Respondent's selection of COMFORTCLUB and the filing of U.S. Registration No. 3,618,331 therefore, the date that Respondent's Mark was selected and cleared, and identify all persons involved in the selection and clearance of Respondent's Mark.

ANSWER:

Given the amount of time that has lapsed between Respondent's selection of COMFORTCLUB and the filing of U.S. Registration No. 3,618,331, Respondent relies on the written materials and the United States federal trademark application databases and records that exist on the website, www.uspto.gov in answering this interrogatory. Respondent is unable to know, without guessing, which individuals at the United States Patent and Trademark Office were involved in the "clearance of the [COMFORTCLUB] mark." Respondent, Barnaby Heating & Air, LLC, developed the COMFORTCLUB trademark in the Fall and Winter of 2007 and Respondent has been using the COMFORTCLUB mark in commerce continuously since at least as early as January 2008.

Respondent incorporates its response to Interrogatory No. 1 above, as if fully set forth herein. Respondent's President Mr. Charlie Barnaby along with Shelby Cuellar selected the COMFORTCLUB mark and following a search online and a search of the United States and Patent and Trademark Office archives filed for federal trademark protection. Respondent selected and conducted multiple online searches to confirm that no other companies offering air conditioning and heating services were using the COMFORTCLUB mark in commerce. Respondent filed the United States federal trademark application on without the aid of anyone outside of Respondent's company, or an attorney, or agent at the U.S. Trademark Office.

INTERROGATORY NO. 3:

State Respondent's annual expenditures in developing and marketing COMFORTCLUB.

ANSWER:

Respondent would have to speculate or guess about the amount of money spent developing and marketing COMFORTCLUB on an annual basis. Respondent has produced receipts for the Rip Hangers purchased in January 28, 2008 after months of development of the COMFORTCLUB mark that began in the Fall or Winter of 2007. Respondent has also produced an invoice for carbonless COMFORTCLUB business forms. Respondent relies upon those documents in response to this Interrogatory.

Respondent maintains the website, www.barnabyheatandair.com, on which Respondent markets COMFORTCLUB mark and COMFORTCLUB memberships. Respondent expends approximately $3,700 annually as a member of the Better Business Bureau through which Respondent advertises the

COMFORTCLUB mark. Respondent expended money employing Mr. Shelby Cuellar during the Fall and Winter of 2007 and in the Winter and Spring of 2008 paying Mr. Cuellar an income while Mr. Cuellar and Mr. Barnaby developed the COMFORTCLUB mark. Respondent employed Mr. Cuellar and paid Mr. Cuellar an income when Respondent began its initial marketing campaign and use of the COMFORTCLUB mark in commerce in 2008.

Respondent has used the COMFORTCLUB Mark continuously since at least as early as January 2008, and Respondent did not independently account for or apportion those amounts it spent developing and marketing the COMFORTCLUB Mark on an annual basis from late 2007 through today.

Respondent incurred filing and registration fees for securing the federal trademark for Respondent's COMFORTCLUB mark. Respondent estimates that it spent approximately $10,000 on January 18, 2008 – January 25, 2008 for its initial COMFORTCLUB marketing campaign, including the purchase of 5,000 Rip Hangers, forms, strategic marketing campaigns, and for the purchase of additional printed marketing materials. Respondent also incorporated the COMFORTCLUB mark onto its existing website. Respondent estimates that it has spent approximately $200,000 in developing and marketing the COMFORTCLUB Mark from the Fall or Winter of 2007 through today's date.

INTERROGATORY NO. 4: Describe all documents supporting or negating Respondent's priority and ownership of COMFORTCLUB.

ANSWER: Respondent "describes" the following documents: (1) All documents produced herewith, including but not limited to Respondent's business records, the August 21, 2007, NIGHTHAWK AIRTIME MEMBER AGREEMENT, entered into between AirTime, LLC and Respondent, an undated Confidentiality Agreement entered into by Respondent and Clockwork Home Services, Inc. formerly known as Venvest, Inc., invoices and forms indicating the dates that Respondent began marketing and advertising its COMFORTCLUB mark, emails to and from individuals at Success Academy beginning in February 2008, Respondent's credit card statements indicating the dates and amounts Respondent paid to AirTime, LLC as a member of AirTime 500 and for developing, registering, and marketing the COMFORTCLUB mark, registration materials for an AirTime 500 March 11-15, 2008 AirTime 500 EXPO, course materials from a "SGI" "The Senior Sales Technician" course attended by Respondent's Charlie Barnaby in March 17-19, 2008, and any and all documents relating to the formation of Petitioner as a limited liability company formed in the State of Delaware, any and all documents Respondent received from Success Academy as a

member of AirTime 500, any and all documents that contain images from Respondent's website, any and all documents showing the corporate formation and/or dissolution and/or merger of AirTime, LLC and any and all companies that may have merged with AirTime, LLC, any and all documents indicating the dates Clockwork Home Services, Inc. was formed and the date of the forfeiture of its incorporation, any and all corporate formation records, fictitious names certificates, annual reports, change in registered agents, and any other corporate or company filings made by Success Group International, New Millennium Academy, LLC, AirTime, LLC, Clockwork Home Services, Inc., Clockwork IP, LLC, The New Masters Alliance, LLC, DirectEnergy, Inc., Aquila Investments, CW 2012, LLC, Plumbers Success, LLC, Roofers Success, LLC, Clockwork, Inc., and Barnaby Heating & Air, LLC. Respondent will also rely on all assignments on filed by or on behalf of Petitioner with the USPTO. Respondent will rely on all assignments to and from Aquila Investments, Inc.

Respondent will also generally rely on any and all documents that relate in any way to Petitioner's alleged claims and Respondent's defenses, including the sworn pleadings and the sworn answer of the parties, those documents that Petitioner and Respondent will include on their exhibit lists, any and all documents identified by Petitioner or Respondent in Rule 26(A)(1) Disclosures, any and all documents on file with the U.S. Patent & Trademark Office, and the Trademark Trial and Appeal Board. Respondent will rely on documents acquired from Petitioner's former or current counsel and or agents, documents located in Respondent's business materials and documents Petitioner served upon other parties – not yet a party to this action. Respondent will rely on Petitioner's application to the U.S. Trademark Office, Application No. 85/880911, filed March 20, 2013 based upon "intent to use".

Respondent has no firsthand knowledge about the document, Bates Numbered OHAC-OTT-001, produced by Petitioner in this cancellation proceeding, which purports to show a nearly identical mark, "COMFORT CLUB", being used in the "*Dynamic Training*" "SUCCESS ACADEMY" "THE ON-TIME TECHNICIAN" "ONE HOUR HEATING & AIR CONDITIONING™" "Always on Time…Or You Don't Pay a Dime! ®" Organization. Respondent had never seen the document, Bates Numbered OHAC-OTT-001, entitled "*Dynamic Training*" "SUCCESS ACADEMY" "THE ON-TIME TECHNICIAN" "ONE HOUR HEATING & AIR CONDITIONING™" "Always on Time…Or You Don't Pay a Dime! ®" until this document was produced by Petitioner just prior to the initiation of this cancellation proceeding. Petitioner does not own franchises. Respondent was never a franchisee of Petitioner's. Respondent was never a member of any organization belonging to Petitioner. Because Respondent was never a member of any organization related to "*Dynamic Training*" "SUCCESS ACADEMY" "THE ON-TIME TECHNICIAN" "ONE HOUR HEATING

& AIR CONDITIONING™" "Always on Time…Or You Don't Pay a Dime! ®", Respondent never attended a "*Dynamic Training*" "SUCCESS ACADEMY" "THE ON-TIME TECHNICIAN" "ONE HOUR HEATING & AIR CONDITIONING™" "Always on Time…Or You Don't Pay a Dime! ®" course.

Respondent never entered into a contract with Petitioner. Respondent, Barnaby Heating & Air, LLC, is a Texas Limited Liability Company. On August 21, 2007, Respondent entered into a contract titled NIGHTHAWK AIRTIME MEMBER AGREEMENT with AirTime, LLC, a Missouri Limited Liability Company and Respondent became a "member" of an organization known as "AirTime 500". Respondent has no personal knowledge about the relationship between Petitioner and AirTime, LLC or Petitioner and the AirTime 500 organization.

From a review of documents produced by Petitioner just prior to the initiation of this cancellation proceeding, Respondent believes that an entity known as "SGI" and/or "Success Academy" may provide training and educational programs for multiple organizations, including the "AirTime 500" organization to which Respondent belonged beginning in August 2007. Respondent was never a member of any other organization owned by, managed by, or in any way related to Petitioner. Clockwork Home Services, Inc. owned "ONE HOUR HEATING & AIR CONDITIONING™" franchises. Respondent does not nor has it ever owned a "ONE HOUR HEATING & AIR CONDITIONING™" franchise. As a result of never having owned a "ONE HOUR HEATING & AIR CONDITIONING™" franchise, Respondent never saw, nor was Respondent ever provided, a copy of the document, Bates Numbered OHAC-OTT-001, entitled, "*Dynamic Training*", "SUCCESS ACADEMY", "THE ON-TIME TECHNICIAN", "ONE HOUR HEATING & AIR CONDITIONING™" "Always on Time…Or You Don't Pay a Dime! ®". Respondent was never provided a copy of the document, Bates Numbered OHAC-OTT-001, entitled, "*Dynamic Training*", "SUCCESS ACADEMY", "THE ON-TIME TECHNICIAN", "ONE HOUR HEATING & AIR CONDITIONING™" "Always on Time…Or You Don't Pay a Dime! ®" until Petitioner disclosed this document to Respondent in this litigation.

Pursuant to Rule 26(a)(1)(B) of the Federal Rules of Civil Procedure, Barnaby provides the following description of categories of documents, electronically stored information, and tangible things that Barnaby has in its possession, custody, or control and may use to support its claims or defenses. Unless otherwise noted, the documents described above and the following documents, electronically stored information, and tangible things have been produced herewith:

a. Documents pertaining to the historical use, sales and advertising of Barnaby's services and Barnaby's COMFORTCLUB mark.

b. Advertisements and other documents pertaining to the continuous use of the "COMFORTCLUB" mark by Barnaby, from a date prior to the date of first use alleged by Clockwork in documents produced in this case and in documents filed with the U. S. Patent and Trademark Office, Application No. 85/880911 – COMFORTCLUB – by Petitioner.

c. Internet printouts from Barnaby's website at www.barnabyheatingandair.com.

d. Documents pertaining to the subscription, development and history of the website www.barnabyheatingandair.com.

e. Documents pertaining to the subscription, development and history of the website www.onehourheatandair.com.

f. Documents and franchise materials from the One Hour Heating & Air.

g. Internet printouts from DirectEnergy. Internet printouts from One Hour Heating & Air.

Barnaby expressly reserves the right to supplement this response.

INTERROGATORY NO. 5:

List and describe all Petitioner, SGI, or AirTime events, including without limitation, Success Day and Success Academy sessions, CONGRESS franchise events, SGI EXPO events, BRAND DOMINANCE events, Senior Tech events, and any similar events attended by Respondent since 2006.

ANSWER:

Respondent has not attended any events held by Petitioner. Respondent is unaware of any "SGI" events. Respondent has never attended a "CONGRESS franchise event." Respondent has never attended a "BRAND DOMINANCE" event. Respondent is a former member of "AirTime 500" and only attended AirTime 500 events. Respondent attended a "SGI AirTime 500 EXPO" in September 2007. Respondent believes that while he was present at the September 2007 "SGI AirTime 500 Expo" he may have attended a "Success Day" sales and marketing meeting. Respondent attended a "SGI AirTime 500 EXPO" in approximately March 10-15, 2008 and attended a "Success Academy" "The Senior Sales Technician" meeting from March 2008. The March 2008 "Success Academy" "The Senior Sales Technician" was the only training event Respondent ever attended. Respondent attended other AirTime 500 Expos periodically from 2009 through 2012. Respondent is no longer an AirTime 500 member.

INTERROGATORY NO.·6:

Describe Respondent's relationship with Petitioner, SGI, and AirTime 500.

ANSWER: Respondent has no relationship with Petitioner. Respondent has no relationship with SGI. Respondent has no relationship with AirTime 500.

INTERROGATORY NO. 7:

Describe and list all agreements between Respondent and Petitioner, Respondent and SGI, Respondent and AirTime 500, including without limitation all Acknowledgements of Non-Solicitation Policy or Confidentiality Agreements executed by Respondent.

ANSWER: Respondent has no agreements with Petitioner. Respondent has no agreements with SGI. Respondent has no agreements with AirTime 500. Respondent is a former member of AirTime 500 and on August 21, 2007 entered into a contract with AirTime, LLC. Respondent refers Petitioner to the August 21, 2007 contract between Respondent and AirTime, LLC produced herewith. Respondent has never signed any agreements with Petitioner. Respondent is not a licensee of Petitioner.

INTERROGATORY NO. 8:

Describe all goods and services with which Respondent's Mark has been, is intended to be, or is currently used and, for each good or service identified:

(a) state the date of first use anywhere and the date of first use in commerce and the nature of that first use in commerce;

(b) describe any periods of non-use;

(c) describe the distribution system for each such good or service including the channels of trade in which such good or service is or will be distributed;

(d) describe the methods by which Respondent has advertised or promoted the sale of each good or service, including, without limitation, the types of media in which such advertising and promotion has been conducted;

(e) identify and describe the geographic scope of any advertising and sales for each good or service provided;

(f) identify all instances of use of Respondent's Mark by Respondent or Respondent's licensees, including use in marketing materials, internal materials, and Respondent's websites.

ANSWER:

Respondent has used the COMFORTCLUB mark continuously since, at least as early as January 22, 2008 in its promotional materials and its marketing materials. Respondent relies on the materials produced herewith describing Respondent's goods and services for which Respondent's Mark has been and is currently used. Respondent incorporates its response to Interrogatories Nos. 1, 2, 3, and 4, and the documents produced herewith.

INTERROGATORY NO. 9:

Describe all facts and identify all documents and things relating to and showing Respondent's use of Respondent's Mark in commerce before and after Mr. Charles Barnaby's execution of the Success Academy "Acknowledgement of Non-Solicitation Policy" dated March 17, 2008.

ANSWER:

See Respondent's answer to Interrogatory Nos. 1-4 and No. 8, which answer is fully incorporated herein.

INTERROGATORY NO. 10:

Identify and describe the types of customers to whom Respondent has provided or is providing COMFORT CLUB services and, for each type of customer:

(a) indicate the approximate fractional or percentage dollar volume of sales to each type of customer; and

(b) state the method by which Respondent has provided or is providing services identified with Respondent' s Mark, including without limitation, channels of trade utilized or being utilized by Respondent.

ANSWER:

Respondent incorporates its response to Interrogatories Nos. 1, 2, 3, and 4 and to Interrogatory No. 8, and the documents produced herewith.

INTERROGATORY NO. 11:

State the annual revenues generated in connection with Respondent's services offered under Respondent's Mark from the date of first use to present.

ANSWER:

Respondent incorporates its response to Interrogatories Nos. 1, 2, 3, and 4 and to Interrogatory No. 8, and Respondent relies on the COMFORTCLUB club membership sales materials produced herewith. Respondent reserves the right to supplement this response.

INTERROGATORY NO. 12:

State whether any search, inquiry, investigation, or marketing survey has been or is being conducted relating to the availability, registrability, or enforceability of Respondent's Mark and, if so, for each identify all documents relating to the search or investigation including, but not limited to, each report referring to or reflecting the search or investigation.

ANSWER:

Respondent performed a thorough search, inquiry, investigation, and marketing survey prior to expending advertising dollars and securing a federal trademark registration for the COMFORTCLUB mark. Respondent does not have a printed report of each effort it made prior to filing its federal trademark application. Respondent refers Petitioner to the documents produced herewith relating to the registration of Respondent's COMFORTCLUB mark.

INTERROGATORY NO. 13:

Describe in detail all instances in which Respondent has received objections or misdirected inquiries regarding its use and/or application for Respondent's Mark.

ANSWER:

Respondent does not understand the request as drafted. Respondent is unsure what Petitioner means by "instances in which Respondent has received objections or misdirected inquiries regarding its use and/or application for Respondent's Mark." Subject to the foregoing and without waiving same, Respondent is only aware of the objections made by Clockwork Home Services, Inc. and now Clockwork IP, LLC regarding Respondent's use of Respondent's COMFORTCLUB Mark. Respondent also received an "objection" to the use of Respondent's use of the COMFORTCLUB mark from McAfee Heating & Air Conditioning, Inc. at some time in 2013. Respondent refers Petitioner to the documents produced herewith.

INTERROGATORY NO. 14:

Describe in detail all facts and identify all documents and things relating to any alleged association between Petitioner and Respondent.

ANSWER:

There is no relationship between Respondent and Petitioner.

INTERROGATORY N0. 15:

Identify any members of the public known to Respondent to have been or who may have been confused with respect to Respondent's Mark as a result of, or with respect to, the use by Petitioner of the mark COMFORT CLUB; and:

(a) Describe each such instance of confusion; and

(b) Identify any persons who can testify regarding each such instance.

ANSWER:

Respondent does not understand the request as drafted. Respondent is unclear what Petitioner means by "any members of the public known to Respondent to have been or who may have been confused with respect to Respondent's Mark as a result of, or with respect to, the use by Petitioner of the mark COMFORT CLUB." Subject to the foregoing, Respondent is not aware of any members of the public to have been or who may have been confused with respect to Respondent's Mark.

INTERROGATORY NO. 16:

Identify each person that was a potential customer of Respondent who would have received any advertising or marketing material displaying Respondent's Mark.

ANSWER:

Respondent would identify those 5,000 plus customers to whom Respondent distributed flyers beginning in January 2008. Respondent identifies the individuals as J. Does 1-5,000. Respondent also identifies every single individual who has ever accessed its website, the Better Business Bureau's website on which they may have viewed Respondent's advertisements of its COMFORTCLUB mark. Respondent also advertises on the radio and Respondent would identify each and every listener during the time Respondent's COMFORTCLUB was being advertised.

INTERROGATORY NO. 17:

Describe Respondent's present or future plans to market goods and/or services offered under Respondent's Mark beyond the scope of that which Respondent currently offers.

ANSWER:

Respondent expects to continue to use its COMFORTCLUB mark as it has been using it since 2008.

INTERROGATORY NO. 18:

State the date of, and describe in detail the circumstances of, when you first became aware of Petitioner's Mark.

ANSWER:

Respondent first became aware of Petitioner's infringement of Respondent's trademark while conducting an online search some time in 2011.

INTERROGATORY NO. 19:

State all facts on which Respondent relies in support of the allegation in its application for U.S. Registration No. 3,618,331 that "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive...."

ANSWER:

In Responding to this Interrogatory, Respondent incorporates its answers to Interrogatories Nos. 1, 2, 3, 4, 8 and Interrogatory No. 18.

INTERROGATORY NO. 20:

State all facts on which Respondent relies in support of the allegation in its application for U.S. Registration No. 3,618,331 for COMFORTCLUB that Respondent was the rightful "owner of the trademark/service mark sought to be registered."

ANSWER:

In Responding to this Interrogatory, Respondent incorporates its answers to Interrogatories Nos. 1, 2, 3, 4, 8 and Interrogatory No. 18.

INTERROGATORY NO. 21:

Identify all interactions Respondent had with Petitioner or Petitioner's legal representatives prior to the filing of its application for U.S. Registration No. 3,618,331.

ANSWER:

None.

INTERROGATORY NO. 22:

Describe all facts and identify all documents and things upon which Respondent bases its denials in Respondent's Answer to the Petition to Cancel in this proceeding.

ANSWER:

Respondent is unable to provide a narrative answer to this interrogatory and instead relies on information that is available from its business records and electronically stored records in accordance with Federal Rule of Civil Procedure 33(d). Respondent also incorporates its answers to Interrogatories Nos. 1-4, 8, and 18.
In drafting Respondent's Answer, Respondent denied the facts and claims in the numbered paragraphs corresponding to Petitioner's petition for cancellation that were untrue and with which Respondent could not agree.

By way of example, in Paragraph's 1-3, from Petitioner's Petition to Cancel, Petitioner alleges that it owns the trademark "COMFORT CLUB", Application No. Application No. 85/880911, filed March 20, 2013. In fact, Petitioner does not own the "COMFORT CLUB" mark and has since abandoned its U.S. Trademark application.

Petitioner also claims it owns the COMFORT CLUB mark and has been using it since 2006. Respondent denied this paragraph because it is untrue. It is untrue, because Petitioner has failed to produce any evidence that is has used the Mark since 2006. Petitioner filed an application with the U.S. Trademark Office on March 20, 2013 alleging as its filing basis an intent to use the COMFORT CLUB mark in commerce rather than actual use.

Petitioner's U.S. Trademark Application No. 85/880911 was abandoned by Petitioner.

Petitioner willfully made false statements knowing they were punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001. Despite such knowledge, Petitioner willfully filed a federal trademark application, filed under 15 U.S.C. Section 1051(b), asserting that it believed it was entitled to use the Mark in commerce and that no other entity, including Respondent, had the right to use the Mark in commerce. This was a willfully false statement made by Petitioner in March 2013, just shortly before filing its Petition to Cancel.

Petitioner's Petition to Cancel contradicts basic representations made by Petitioner's attorneys' and/or agent's in the written documents and verbal discussions prior to the initiation of this cancellation proceeding.

Petitioner signed a sworn declaration before the U.S. Trademark Office, and was warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001. Petitioner also declared under oath that under 15 U.S.C. Section 1051(b), (1) it believed it was entitled to use such mark in commerce; (2) that to the best of its knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and (3) that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true. Not only did Petitioner abandon its federal trademark application, but it has failed to provide any evidence it used the COMFORTCLUB Mark in commerce since 2006, and there are zero documents attached as exhibits to Petitioner's Petition to Cancel indicating any use by Clockwork IP, LLC. of the COMFORTCLUB mark as early as 2003, or from 2003 to 2008.

Additionally, according to documents produced by Petitioner in this proceeding appear to assert that DirectEnergy, Inc. or Clockwork Home Services, Inc. may have used a substantially similar mark, COMFORT CLUB.

Respondent also bases its affirmative defenses on the timing of Petitioner's Petition for Cancellation, which was filed well over five (5) years after Respondent began using the COMFORTCLUB mark in commerce.

Respondent was never owned a "One Hour Heating and Air" franchisee and never attended any meeting

where “One Hour Heating and Air” marketing materials were distributed.

Respondent’s date of first use of its COMFORTCLUB mark precedes the date of any applicable membership agreement entered into between Respondent and Clockwork Home Services, Inc. Respondent has never done business with Petitioner. Respondent has never entered into a contract with Petitioner. Respondent is not a licensee of Petitioner’s

Respondent declines to provide a further narrative answer to this interrogatory because the interrogatory asks for information that is available from documents produced in this case, on which Respondent relies in answering this Interrogatory, and the pleadings filed in this case including the Petition to Cancel and Answer and Affirmative Defenses, and this interrogatory is best addressed via a deposition. Fed. R. Civ. P. 33(d).

INTERROGATORY NO. 23:

Describe all facts and identify all documents and things upon which Respondent bases its Affirmative Defenses in Respondent 's Answer to the Petition to Cancel in this proceeding.

ANSWER:

In reliance upon Federal Rule of Civil Procedure 33(d), Respondent declines to provide a narrative answer to this interrogatory and relies on its business and electronically stored records that were produced in this case. Fed. R. Civ. P. 33(d). Respondent relies on any and all documents produced herewith, including (1) its business records, (2) documents produced by Petitioner in this case, (3) conversations Respondent has had with Petitioner’s agents or employees, (4) representations made by Petitioner and its employees, (5) representations made by Petitioner’s attorneys during the pendency of this matter and prior to the initiation of this matter, (6) Respondent’s federal trademark application and registration materials, and (7) Respondent’s memory, (8) Petitioner’s federal trademark application and the corresponding file materials, (9) Petitioner’s abandonment of its federal trademark registration, (10) any and all documents that Petitioner may produce in this case, or identify in its Disclosures, discovery documents, pretrial disclosures, or other materials filed in this proceeding, (11) all corporate registration and formation documents and dissolution documents, (12) all assignments on file with the U.S. Patent and Trademark Office. To the extent this interrogatory calls for a narrative from Respondent and to the extent Respondent has inadvertently failed to recall each and every single document, fact, or circumstance upon which it relies in defending against Petitioner’s baseless claims, Respondent specifically reserves the right to supplement and amend this

response.

INTERROGATORY NO. 24:

Identify all persons having knowledge of the denials asserted in Respondent's Answer to the Petition to Cancel, and describe the substance of those persons' knowledge.

ANSWER:

Respondent declines to provide a narrative answer to this interrogatory because the interrogatory asks for information that is available from its business and electronically stored records. Fed. R. Civ. P. 33(d). Respondent would refer Petitioner to documents produced by Respondent in this case and Respondent's Rule 26(a)(1) disclosures for a list of those individuals Respondent believes have the most knowledge about the facts of this case. Subject to the foregoing,

John Paccuca, Blue Stream Services, Inc., 850 Vandalia Street, Suite 120, Collinsville, IL 62234. It is believed that Mr. Paccuca has information and knowledge regarding Respondent's priority of use over that of Petitioner.

Travis Barnaby, 4620 Industrial Street, Suite C, Rowlett, TX 75088, an employee of Barnaby Heating & Air and has worked in Respondent's office and it is believed that Mr. Barnaby has information and knowledge regarding Respondent's priority of use over that of Petitioner.

Shelby Cuellar, 4800 Northway Drive, Apartment 2N, Dallas, TX 75206, the nephew of Respondent's Mr. Charlie Barnaby, an employee of Barnaby Heating & Air and has worked in Respondent's office and it is believed that Mr. Barnaby has information and knowledge regarding Respondent's priority of use over that of Petitioner.

Thomas Dougherty, 6305 Carrizo Drive, Granbury, TX 76049. It is believed that Mr. Dougherty has information and knowledge regarding Respondent's priority of use over that of Petitioner.

Paul Riddle, Vice President of Operations for Clockwork Home Services. Mr. Riddle has information regarding the history and use of the COMFORTCLUB mark by Barnaby, prior to use of the Mark by Petitioner.

Randy Kelley, 1510 Stevens St., The On Time Experts, Dallas, Texas 75218. Mr. Kelley is a former franchisee of Petitioner and it is believed that Mr. Kelley has information pertaining to Petitioner's use of the "Comfort Club" mark. Mr. Kelly is a former franchisee of Petitioner's and has knowledge of Respondent's priority of use of the COMFORTCLUB mark over that of Petitioner.

Mr. Jay Rol, Rol Air, Plumbing and Heating, 7510 Lannon Avenue NE, Albertville, MN 55301. Mr. Rol is a current user of the COMFORTCLUB mark under license from McAfee Heating & Air Conditioning, Inc. and has information pertaining to McAfee Heating & Air's use of the COMFORTCLUB mark in commerce.

Juli Cordray Barnaby Heating & Air LLC, 4620 Industrial Street, Suite C, Rowlett, TX 75088. Ms. Cordray is an employee of Barnaby Heating & Air and was in the office during Mr. Barnaby's telephone conversations with Petitioner's employee, Mr. Paul Riddle.

Greg McAfee, McAfee Heating & Air Conditioning, Inc., 4770 Hempstead Station Dr., Kettering, Ohio 45429. Mr. McAfee is the owner of McAfee Heating & Air Conditioning, Inc., the current assignee of the COMFORTCLUB mark from Respondent. It is believed that Mr. McAfee has knowledge of McAfee's priority over that of Petitioner, given McAfee's use of the COMFORTCLUB mark in commerce since 1999. See the documents produced in response to various Requests for Production, submitted herewith.

Charlie Barnaby owns and operates Barnaby Heating & Air and has intimate knowledge of the conception, development, marketing, and continuous use of the COMFORTCLUB mark by Respondent since the Fall or Winter of 2007 and first use in commerce beginning at least as early as January 2008.

Deborah Barnaby, R.N. co-owner of Barnaby Heating & Air, LLC, who has knowledge of the conception, development, marketing, and continuous use of the COMFORTCLUB mark by Respondent since the Fall or Winter of 2007 and first use in commerce beginning at least as early as January 2008.

Scott Boose, former President of Clockwork Home Services, Inc. who has knowledge of the dates Respondent sent cease and desist correspondence to a One Hour Heating and Air franchisee regarding the use of Respondent's COMFORTCLUB mark.

Steven Thrasher, former counsel of Respondent, who drafted a cease and desist correspondence to Clockwork Home Services, Inc.

John Pare, former Secretary of Clockwork, Inc. and counsel for Petitioner, who has knowledge of the sell and dissolution of Clockwork Home Services, Inc., the merger of various entities, including Electricians Success International, LLC, Plumbers Success International, LLC, and Roofers Success International, LLC with AirTime, LLC, the sale of AirTime, LLC to Aquila Investments, LLC, the parties to any contract between Respondent and AirTime, LLC or Respondent and Success Academy, LLC or New Millennium Academy, LLC., the assignment of Clockwork Home Services, Inc.'s or Clockwork, Inc.'s or Clockwork IP, LLC's trademarks to Aquila Investments, LLC in 2013.

Rebecca Cassel, President of Aquila Investments, LLC who has knowledge of the dissolution and/or merger of AirTime, LLC, and the assignment of intellectual property to Aquila Investments, LLC.

Robert R. Beckmann, former Secretary of VenVest Ventures, Inc. who has knowledge of the merger of VenVest Ventures, Inc. with Clockwork Home Services, Inc.

Robin Faust, formerly with Success Academy, who received and sent emails from and to Respondent's Charles Barnaby regarding the January 2008 advertisement showing Respondent's use of the COMFORTCLUB mark prior to attending any Success Academy Senior Technician Training.

Any and all employees of Success Academy.

Any and all employees of AirTime, LLC. These individuals have knowledge of the materials that are shared with independent contractors who are members of AirTime 500, versus the proprietary materials that are shared with Clockwork Home Services, Inc. franchisees.

Sean Collin, of Pitts & Eckel, P.C., who has knowledge of the transfer and assignment of intellectual property to Aquila Investment, LLC and the dissolution of Clockwork Home Services, Inc. and Clockwork, Inc.

Any and all employees of Respondent.

INTERROGATORY NO. 25:

Identify all persons having knowledge of allegations and facts which you asserted in these interrogatory responses and describe the substance of those persons' knowledge.

ANSWER:

Respondent incorporates its response to Interrogatory No. 25 herein.

INTERROGATORY NO. 26:

Identify each person whom Respondent may call to testify on his behalf in this Cancellation.

ANSWER:

Respondent incorporates its response to Interrogatory No. 25 herein

INTERROGATORY NO. 27:

Describe all facts and identify all documents and things relating to and supporting Respondent's Affirmative Defenses in its Answer to Petitioner's Petition to Cancel.
Identify all documents and things on which Respondent intends to rely in this Cancellation.

ANSWER:

Respondent will rely on any and all documents that tend to support its defenses in this case, including, but not limited to any and all documents identified in Interrogatories Nos. 1 – 26, above. Respondent specifically reserves the right to supplement this response.

RESPONDENT'S OBJECTIONS AND RESPONSES TO PETITIONER'S FIRST REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS

REQUEST FOR PRODUCTION NO. 1:

All documents and things identified in Respondent's responses to Petitioner's First Set of Interrogatories to

Respondent served in connection with this Cancellation.

ANSWER:

See documents produced herewith.

REQUEST FOR PRODUCTION NO. 2:

All documents and things not identified in Respondent's responses to Petitioner's First Set of Interrogatories to Respondent which nonetheless were reviewed or relied upon by Respondent in preparing answers to said Interrogatories, or which support Respondent's responses thereto.

ANSWER:

See documents produced herewith.

REOUEST FOR PRODUCTION NO. 3:

All documents and things relating to the following:

(a) Respondent's creation, selection, development, clearance, approval, and adoption of Respondent's Mark, including all documents relating to any trademark searches which were conducted by or for Respondent in connection with Respondent's Mark, the results thereof, and samples of any marks or names considered and rejected.

(b) The content or result of any meeting or discussion at which Respondent's consideration, acquisition, selection, approval, or adoption of Respondent's Mark were discussed;

(c) Further investigations conducted by or on behalf of Respondent into the current status of any marks uncovered by trademark searches which were conducted by or for Respondent in connection with Respondent' s Mark;

(d) Information, notice, or opinion(s) concerning conflict or potential conflict associated with your adoption, use, or registration of Respondent's Mark;

(e) All communications in which a person has recommended or cautioned against

Respondent's acquisition, selection, development, adoption , or use of Respondent' s Mark; and

(f) All information, notices, or opinions concerning the availability of Respondent' s Mark for use or registration.

ANSWER:

See documents produced herewith.

REQUEST FOR PRODUCTION NO. 4:

All documents and things relating to communications issued or received by Respondent relating to Respondent's Mark.

ANSWER:

See documents produced herewith.

REQUEST FOR PRODUCTION NO. 5:

All documents and things relating to communications issued or received by Respondent relating to Petitioner's Marks.

ANSWER:

See documents produced herewith.

REQUEST FOR PRODUCTION NO. 6:

All documents and things relating to the first use anywhere and the first use in commerce of Respondent's Mark by or on behalf of Respondent.

ANSWER:

See documents produced herewith.

REQUEST FOR PRODUCTION NO. 7:

All documents and things relating to or identifying the nature of Respondent's business, including all

products and services ever offered by Respondent.

ANSWER:

See documents produced herewith.

REQUEST FOR PRODUCTION NO. 8:

Representative examples - such as products, labels, packaging, tags, brochures, advertisements, promotional items, point of sale displays, websites, informational literature, stationery, invoices, or business cards - showing each and every variation in the form of Respondent's Mark which Respondent (or other parties with Respondent's consent) has used, uses, or plans to use depicting Respondent's Mark.

ANSWER:

See documents produced herewith.

REQUEST FOR PRODUCTION NO. 9:

All documents and things relating to any plans which Respondent has to expand the types of goods or services currently offered under Respondent's Mark.

ANSWER:

See documents produced herewith.

REQUEST FOR PRODUCTION NO. 10:

All documents and things relating to the types of customers to whom Respondent has provided or is providing products or services identified by Respondent' s Mark.

ANSWER:

See documents produced herewith.

REQUEST FOR PRODUCTION NO. 11:

All documents supporting or negating Respondent's priority and ownership of COMFORTCLUB, including all documents and things relating to the first use anywhere and the first use in commerce of Petitioner's Mark.

ANSWER:

See documents produced herewith.

REQUEST FOR PRODUCTION NO. 12:

All agreements and policies between Petitioner and Respondent, Respondent and SGI, and Respondent and AirTime 500.

ANSWER:

There are no agreements or policies between Respondent and Petitioner. There are no agreements or policies between Respondent and SGI. There are no agreements or policies between Respondent and AirTime 500. Subject to the foregoing, see documents produced herewith.

REQUEST FOR PRODUCTION NO. 13:

All written communications between Petitioner and Respondent, Respondent and SGI, and Respondent and AirTime 500.

ANSWER:

There are no written communications between Respondent and Petitioner. For any correspondence between SGI or AirTime 500 and Respondent, see responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 14:

All documents and things relating to Respondent's attendance of any Success Day or Success Academy events, CONGRESS franchise events, SGI EXPO events, BRAND DOMINANCE events, and Senior Tech events, including without limitation all 2008 events and sessions.

ANSWER:

Respondent did not attend CONGRESS franchise events, SGI EXPO events, and BRAND DOMINANCE events. For documents responsive to the remainder of this request, see documents produced herewith.

REQUEST FOR PRODUCTION NO. 15:

All documents and things relating to Respondent's past, present, and future marketing plans and methods for products or services identified by Respondent's Mark.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 16:

All documents and things relating to your distribution of and trade channels for the services identified by Respondent' s Mark.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 17:

All documents and things relating to communications between Respondent and third parties concerning the advertisement or promotion of Respondent's Mark.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 18:

All documents and things relating to communications between Respondent and any third party, including consumers, concerning Respondent's Mark or Petitioner's Mark.

ANSWER:

Respondent does not possess documents relating to communications between Respondent and any third party, including consumers, concerning Petitioner's Mark. The documents responsive to the remainder of this request are produced herewith.

REQUEST FOR PRODUCTION NO. 19:

All documents and things relating to expenses for advertisement or promotion of Respondent's Mark, including all documents that summarize or tabulate existing or projected advertising expenditures and expenses associated with Respondent's use of Respondent's Mark.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 20:

All documents and things relating to communications between Respondent and any third party, including consumers and Petitioner franchisees, concerning products and services on which Respondent uses, or has used, the term COMFORTCLUB in commerce.

ANSWER:

Petitioner does not have franchisees. None.

REQUEST FOR PRODUCTION NO. 21:

All documents and things relating to Petitioner 's Marks, including all documents and things relating to any search, inquiry, investigation, or marketing survey that has been, is being, or will be conducted relating to Petitioner's Mark.

ANSWER:

Respondent intends on relying on every single assignment or transfer made by Clockwork Home Services, Inc. and Aquila Investments, Inc. which may be obtained by any party to this proceeding by accessing the U.S. Patent and Trademark Office records, Assignments and Recording Division.

REQUEST FOR PRODUCTION NO. 22:

All documents and things relating to any possibility of confusion, mistake, or deception as to the source of original or sponsorship of any product or service arising out of use of Respondent's Mark.

ANSWER:

None.

REQUEST FOR PRODUCTION NO. 23:

All documents and things relating to any likelihood of confusion, deception or mistake between Respondent's Mark and Petitioner's Marks, including Petitioner's Mark as used by licensee.

ANSWER:

None.

REQUEST FOR PRODUCTION NO. 24:

All documents and things relating to any instances of actual confusion between Respondent's Mark and Petitioner's Marks, including but not limited to documents and things relating to misdirected mail, e-mail, or telephone calls.

ANSWER:

None.

REQUEST FOR PRODUCTION NO. 25:

All documents and things relating to any instances of actual confusion regarding a connection between Petitioner or Petitioner's services and Respondent.

ANSWER:

None.

REQUEST FOR PRODUCTION NO. 26:

All documents and things relating to Respondent's communications with third parties regarding this proceeding.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 27:

All documents and things relating to any communications between Respondent and Petitioner concerning Respondent's Mark.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 28:

All documents and things relating to any communications between Respondent and any other party who has used or owns any rights in any names or marks, including design marks, which are comprised of or include the words COMFORT or CLUB.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 29:

All documents and things relating to the strength or distinctiveness of Respondent's Mark or Petitioner 's Mark.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 30:

All documents and things relating to any application(s) submitted by Respondent to register, maintain, or modify Respondent's Mark on any trademark register worldwide, and any registration(s) issued as a result thereof.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 31:

All documents and things identified in Respondent's Initial Disclosures.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 32:

All documents and things not identified in Respondent's Initial Disclosures which nonetheless were reviewed or relied upon in preparing Respondent's Initial Disclosures.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 33:

All documents showing or relating to Respondent's awareness of, and first dates of awareness of Petitioner's Mark.

ANSWER:

Respondent is not aware that Petitioner owns any mark.

REQUEST FOR PRODUCTION NO. 34:

All documents and things showing use of the term COMFORTCLUB in commerce by Respondent in connection with the sale, offer for sale, and/or distribution of any product or service at any time.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 35:

All documents relating to or detailing Respondent's selection of Respondent's Mark and the decision to file

a U.S. Trademark application for COMFORTCLUB.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 36:

All documents relating to the goods and services with which Respondent's Mark has been, is intended to be, or is currently used.

ANSWER:

See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 37:

All documents and things upon which Respondent bases its denial of Petitioner's allegation in paragraph 8 of Petitioner's Petition to Cancel in this proceeding that "Respondent, Barnaby Heating and Air, has been an AirTime member and licensee of Petitioner since August 21, 2007."

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 38:

All documents and things upon which Respondent bases its denial of Petitioner's allegation in paragraph 22 of Petitioner's Petition to Cancel in this proceeding that "Petitioner introduced its COMFORTCLUB mark at CONGRESS in 2006 ... and has come to be associated with the maintenance plans offered by franchisees and member affiliates for the performance and delivery of home heating, air conditioning and ventilation services."

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 39:

All documents and things upon which Respondent bases its denial of Petitioner' s allegation in paragraph

23 of Petitioner's Petition to Cancel in this proceeding that "Petitioner has priority based upon its prior use and contractual ownership of Petitioner's 'COMFORTCLUB' Mark."

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 40:

All documents and things upon which Respondent bases its denial of Petitioner's allegation in paragraph 23 of Petitioner's Petition to Cancel in this proceeding that Respondent's COMFORTCLUB mark is virtually identical to Petitioner's COMFORTCLUB in sound, appearance, connotation, and form.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 41:

All documents and things upon which Respondent bases its denial of Petitioner's allegation in paragraphs 36 and 37 of Petitioner's Petition to Cancel in this proceeding.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 42:

All documents and things upon which Respondent bases its other denials and admissions in Respondent's Answer to the Petition to Cancel in this proceeding.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 43:

All documents and things upon which Respondent bases its First Affirmative Defense in paragraph 41 - Failure to State a Claim.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 44:

All documents and things upon which Respondent bases its Second Affirmative Defense in paragraph 42- Priority.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 45:

All documents and things upon which Respondent bases its Third Affirmative Defense in paragraph 43 - Fair Use.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 46:

All documents and things upon which Respondent bases its Fourth Affirmative Defense in paragraph 44 - Statute of Limitations.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 47:

All documents and things upon which Respondent bases its Fifth Affirmative Defense in paragraph 45 -

Estoppel.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 48:

All documents and things upon which Respondent bases its Sixth Affirmative Defense in paragraph 46 -

Laches.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 49:

All documents and things upon which Respondent bases its Seventh Affirmative Defense in paragraph 47 - Acquiescence.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 50:

All documents and things upon which Respondent bases its Eighth Affirmative Defense in paragraph 48 -

No Liability.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 51:

All documents and things upon which Respondent bases its Ninth Affirmative Defense in paragraph 49 - No

Standing.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 52:

All documents and things upon which Respondent bases its Tenth Affirmative Defense in paragraph 50 - Non-Use and Abandonment.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 53:

All documents and things upon which Respondent bases its Eleventh Affirmative Defense in paragraph 51.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 54:

All documents and things identified in Respondent's Answer to the Petition to Cancel in this proceeding.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 55:

All documents referring or relating to Respondent' s uses of any term comprised of or containing "COMFORT " and/or "CLUB" including but not limited to use as the common commercial name for a type of product or service, to describe a feature or characteristic of any product or service, as a verb, or in lowercase letters.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 56:

All documents and things sufficient to identify the particular market or market segment in which Respondent's services compete, and all competitors.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 57:

Representative examples of advertising and promotional materials in each media used (e.g., print, television, radio, internet, direct mail, billboards) featuring, displaying, or containing Respondent's Mark

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 58:

Representative samples of all websites, advertisements, catalogs, brochures, posters, flyers, and any other

printed or online promotional materials that have ever been used by Respondent in connection with Respondent's Mark.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 59:

Documents sufficient to show all media (e.g., print, television, radio, internet, direct mail, billboards) in which Respondent has advertised or promoted Respondent's Mark, including but not limited to media schedules and advertising plans.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 60:

Documents sufficient to show the type, identity, and geographic distribution of all media in which Respondent has advertised or intends to advertise goods and services using Respondent's Mark.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 61:

All press releases, articles, and clippings relating to or commenting upon Respondent's Mark or Respondent's services.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 62:

Documents sufficient to show all forms in which Respondent has depicted, displayed, or used Respondent's Mark, including but not limited to all designs, stylizations, and/or logos.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 63:

To the extent not covered by other requests, all documents referring or relating to investigations, searches, research focus groups, reports, surveys, polls, studies, searches, and opinions conducted by or for Respondent relating or referring to Respondent's Mark.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 64:

All documents referring or relating to any objections Respondent has received concerning his use and/or registration of Respondent's Mark.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 65:

Documents sufficient to identify the annual sales revenues in units from sales of goods and services by Respondent under Respondent's Mark.

ANSWER:

To the extent these materials exist, see responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 66:

Documents sufficient to identify any advertising expenses incurred by Respondent in connection with use of Respondent' s Mark.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 67:

Documents sufficient to identify the annual advertising and promotional expenditures for Respondent's Goods from the first use of Respondent's Mark to the present.

ANSWER:

To the extent these materials exist, see responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 68:

All documents referring or relating to Respondent's annual expenditures for developing and marketing Respondent's Mark.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 69:

All documents referring or relating to judicial or administrative proceedings in any forum referring or relating to Respondent' s Mark and/or Respondent's Goods, other than this proceeding.

ANSWER:

None.

REQUEST FOR PRODUCTION NO. 70:

All documents referring or relating to all adversarial proceedings to which Respondent has been a party , including domain name disputes, inter-party proceedings before the U.S. Trademark Trial & Appeal Board or other nation 's trademark offices, or lawsuits filed in a court anywhere in the world.

ANSWER:

None.

REQUEST FOR PRODUCTION NO. 71:

All documents referring or relating to agreements Respondent has entered into (oral or written) relating to Respondent's Mark, including but not limited to development agreements, license agreements, co-branding agreements, consent agreements, coexistence agreements, assignments, settlement agreements, and advertising agreements.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 72:

All documents and things sufficient to identify all uses of Respondent's Mark by Respondent or Respondent's licensees, including use in marketing materials, internal materials, and Respondent's websites.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 73:

All documents and things sufficient to identify the meaning of Respondent's Mark and the messages that Respondent intends to convey to consumers with respect to Respondent's Mark.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 74:

All documents and things sufficient to identify the ways in which the type of consumer to whom Respondent has been marketing or will market its goods and services under Respondent's Mark is different from the type of consumer to whom Respondent believes Petitioner is marketing its goods and services.

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 75:

All documents referring or relating to all known third-party uses of terms comprised of or containing "Comfort" and "Club" in connection with HVAC or any other goods or services offered by Respondent, or use of "comfortclub" as the common commercial name for a type of product or service, to describe a feature or characteristic of any product or service, as a verb, or in lowercase letters.

ANSWER:

To the extent these materials are in Respondent's possession, see responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 76:

All documents relied upon by Respondent to support the allegation in its application for U.S. Registration No. 3,618,331 that "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive."

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 77:

All documents relied upon by Respondent to support the allegation in its application for U.S. Registration No. 3,618,331 that Respondent was the rightful "owner of the trademark/service mark sought to be registered."

ANSWER:

See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 78:

All documents referring or relating to any and all interactions Respondent had with Petitioner or Petitioner's legal representatives prior to the filing of its application for U.S. Registration No. 3,618,331.

ANSWER: None.

REQUEST FOR PRODUCTION NO. 79:

All documents referring or relating to Respondent's reasons for selecting the mark "COMFORTCLUB" as a compounded or unitary mark.

ANSWER: See responsive documents served herewith.

REQUEST FOR PRODUCTION NO. 80:

All documents referring or relating to the similarity of Respondent's COMFORTCLUB mark and Petitioner's COMFORTCLUB mark.

ANSWER: Petitioner does not own a COMFORTCLUB mark, so none.

REQUEST FOR PRODUCTION NO. 81:

All documents referring or relating to the priority and seniority of Petitioner's COMFORTCLUB mark.

ANSWER: None.

REQUEST FOR PRODUCTION NO. 82:

All documents referring or relating to the similarity in the services listed in the Respondent's Mark and the services marketed or sold by Petitioner under Petitioner's Mark.

ANSWER: Not applicable, as Petitioner and Respondent are not similar entities. Petitioner is not a provider of air conditioning and heating services.

REQUEST FOR PRODUCTION NO. 83:

All documents and things relating to Respondent's document retention and destruction policies or

guidelines, if any, which may relate to documents covered by any request herein.

ANSWER: None.

REQUEST FOR PRODUCTION NO. 84:

All documents Respondent intends to introduce into evidence in this proceeding.

ANSWER: Respondent has not made a determination as to which documents Respondent intends to introduce into evidence in this proceeding. When the time comes for the introduction of evidence, Respondent may, or may not, introduce each and every document produced herewith, including any and all documents on which Petitioner may or may not introduce.

REQUEST FOR PRODUCTION NO. 85:

All documents on which Respondent intends to rely during the testimony period in support of Respondent's case and all other documents relating to such documents.

ANSWER: Respondent has not made a determination as to which documents Respondent intends to rely upon during the testimony period. When the testimony period opens, Respondent may, or may not, rely on each and every document produced herewith, including any and all documents on which Petitioner may rely or may not rely.

REQUEST FOR PRODUCTION NO. 86:

For each fact witness whom Respondent intends to call in this proceeding, please produce the following:

(a) A resume or employment history;

(b) A written report containing a complete statement of all of his or her opinions and conclusions relevant to this case and the grounds therefor; and

(c) Other information considered by the witness in forming his or her

opinions.

ANSWER: None.

REQUEST FOR PRODUCTION NO. 87:

All documents and things supporting cancellation of Respondent's Mark because Respondent perpetrated fraud on the USPTO.

ANSWER: None.

REQUEST FOR PRODUCTION NO. 88:

All documents and things supporting Respondent' s position that it did not perpetrate fraud on the USPTO with respect to Respondent's Mark.

ANSWER: See responsive documents attached hereto.

REQUEST FOR PRODUCTION NO. 89:

All documents and things relating to each expert witness Respondent has engaged in connection with this proceeding, including but not limited to, resumes, curriculum vitae, references, promotions, matters, opinions, reports, exhibits, and communications concerning any issue presented or considered herein.

ANSWER: None.

REQUEST FOR PRODUCTION NO. 90:

Any written report, memorandum, opinion, or other written documents and things regarding either Respondent's Mark or Petitioner's Marks that was prepared by any expert witness, regardless of whether Respondent presently intends to call such expert witness in this proceeding.

ANSWER: None.

RESPONDENT'S OBJECTIONS AND RESPONSES
TO PETITIONER'S FIRST REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

Respondent has no valid rights in the mark COMFORTCLUB or any variation thereof. At no time was Respondent the owner of COMFORTCLUB.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 2:

Petitioner is the rightful owner of the COMFORTCLUB Mark as used for Petitioner's services and Respondent's services in the U.S.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 3:

At no time was Respondent the owner of COMFORTCLUB.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 4:

Petitioner's Mark has been in use in interstate commerce by Petitioner and/or licensees of Petitioner since at least as early as 2006.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 5:

Respondent has been an AirTime 500 member and licensee of Petitioner since August 21, 2007, by signing the AirTime Member Agreement, Respondent agreed that "AirTime wholly owns and/or has protectable legal rights in and to the AirTime Resources whether ...(b) the AirTime Resources are subject to copyright, trademark ,tradename, and/or patent rights of AirTime ..." In the Member Agreement, Respondent agreed

"[n]ot to use any or all of the AirTime Resources for any purpose other than your valid participation in the AirTime Program . ..[and N]othing in this Agreement shall be construed as conveying to you ...(ii) any license to use, sell, exploit, .copy or further develop any such AirTime Resources." Petitioner's Mark falls under the umbrella of the term "AirTime Resources" as described in said Member Agreement.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 6:

Respondent attended an SGI "Senior Tech" course in March, 2008. Petitioner's COMFORTCLUB Mark and Petitioner's services were discussed and promoted to Airtime members and licensees at the SGI "Senior Tech" course in March, 2008.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 7:

Respondent, without the authorization of Petitioner, filed Application No. 77/420,784 for COMFORTCLUB after attending an SGI course covering Petitioner's services rendered under Petitioner's Mark.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 8:

At all relevant times, Respondent's use of COMFORTCLUB was only as a licensee of Petitioner pursuant to Respondent's AirTime Member Agreement. Respondent was never an owner of the COMFORTCLUB mark.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 9:

Respondent' s Application No. 77/420,784 for Respondent's Mark was filed fraudulently. Respondent' s

Mark is thus void.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 10:

Petitioner used the mark COMFORTCLUB in U.S. commerce before any use of the mark COMFORTCLUB in U.S. commerce by Respondent commenced.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 11:

Prior to March 13, 2008, the filing of Application No. 77/420,784, Respondent was aware of Petitioner's senior and prior right in Petitioner's Mark for both Petitioner's services and Respondent's services.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 12:

Respondent's Mark is identical to Petitioner's Mark.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 13:

Respondent's Mark is confusingly similar to Petitioner's Mark.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 14:

Respondent's services are the same as Petitioner's services.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 15:

Respondent's services are sold through the same channels of trade as Petitioner's services and directed to the same consumers.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 16:

Respondent is no longer an AirTime Member and is using the COMFORTCLUB mark without authorization from Petitioner.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 17:

Respondent's Mark so closely resembles Petitioner's Mark such as to cause confusion, mistake, or deception, and/or to cause the consuming public to believe that Respondent's services marketed or sold in connection with Respondent's Mark originate with or are sponsored, endorsed, licensed, authorized and/or affiliated or connected with Petitioner and/or Petitioner' s services in violation of Section 2(d) of the Lanham Act.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 18:

Petitioner is and will be damaged by registration of Respondent's Mark.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 19:

Petitioner's rights in Petitioner's Mark predate any use by Respondent of Respondent' s Mark in U.S. commerce.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 20:

All use of the COMFORTCLUB mark by Respondent inured to the benefit of Petitioner, the rightful owner of the COMFORTCLUB mark in the U.S.·

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 21:

On March 13, 2008, Respondent's Owner and Principle Partner, Mr. Charles Barnaby, was aware of Petitioner's senior rights in COMFORTCLUB but signed a fraudulent declaration in support of Respondent's Application No. 77/420,784, with an intent to deceive. the U.S. Trademark Office into granting registration of Respondent's Mark.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 22:

On March 13, 2008, Respondent's Owner and Principle Partner, Mr. Charles Barnaby, was aware of that it was not the rightful owner of the COMFORTCLUB Mark and Application No. 77/420,784, but signed a fraudulent declaration in support of Respondent's application for registration of Respondent's Mark, with an intent to deceive the U.S. Trademark Office into granting registration of Respondent's Mark.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 23:

Respondent's Declaration in Application No. 77/420,784 stating that "to the best of his/her knowledge and

belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive...." is false.

Answer:

Denied.

REQUEST FOR ADMISSION NO. 24:

Petitioner established rights in the United States in its COMFORTCLUB Mark prior to 2008.

Answer: Denied.

REQUEST FOR ADMISSION No. 25:

Since as early as 2006, Petitioner has established extensive, common-law rights in COMFORTCLUB Mark.

Answer: Denied.

REQUEST FOR ADMISSION NO. 26:

Petitioner's rights in COMFORTCLUB date from prior to the filing date of Respondent's Mark or Respondent' s alleged use in United States commerce of Respondent's Mark.

Answer: Denied.

REQUEST FOR ADMISSION NO. 27:

Respondent' s Mark is not entitled to continued registration pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § l 125(d) because it is likely to cause confusion with the Petitioner' s Mark.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 28:

Applicant committed fraud on the U.S. Patent and Trademark Office.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 29:

Respondent's First Affirmative Defense in paragraph 41 of its Answer: to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 30:

Respondent' s Second Affirmative Defense in paragraph 42 of its Answer: to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Denied.

REQUEST FOR ADMISSION NO. 31:

Respondent' s Third Affirmative Defense in paragraph 43 of its Answer: to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Denied.

REQUEST FOR ADMISSION NO. 32:

Respondent' s Fourth Affirmative Defense in paragraph 44 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Denied.

REQUEST FOR ADMISSION NO. 33:

Respondent' s Fifth Affirmative Defense in paragraph 45 of its Answer to Petitioner' s Petition to Cancel is without merit and unsupported by evidence.

Answer: Denied.

REQUEST FOR ADMISSION NO. 34:

Respondent's Sixth Affirmative Defense in paragraph 46 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Denied.

REQUEST FOR ADMISSION NO. 35:

Respondent' s Seventh Affirmative Defense in paragraph 47 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

Answer: Denied.

Dated: April 16, 2015

Respectfully,

Barnaby Heating & Air, LLC

/s/ Julie Celum Garrigue

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **RESPONDENT'S SECOND AMENDED RESPONSE TO PETITIONER'S FIRST SET OF INTERROGATORIES, FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS, AND FIRST REQUEST FOR ADMISSION** was served on counsel for Petitioner and counsel for Co-Respondent, this 16th day of April 2015, by email and by sending the same via First Class Mail:

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/s/ Julie Celum Garrigue
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